

tum by weight of moisture. The fat content is not over 1½ per centum by weight unless otherwise indicated.

The term “milk”, when used herein, means sweet milk of cows.

(Mar. 2, 1944, ch. 77, 58 Stat. 108; July 2, 1956, ch. 495, 70 Stat. 486.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act of June 26, 1938 (ch. 675, sec. 1, 52 Stat. 1040), referred to in text, probably means act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to this chapter (§301 et seq.). For complete classification of this Act to the Code, see section 301 of this title and Tables.

CODIFICATION

Section was not enacted as a part of the Federal Food, Drug, and Cosmetic Act which comprises this chapter, but was made applicable thereto.

AMENDMENTS

1956—Act July 2, 1956, substituted “nonfat dry milk” for “nonfat dry milk solids or defatted milk solids”.

§ 321d. Market names for catfish and ginseng

(a) Catfish labeling

(1) In general

Notwithstanding any other provision of law, for purposes of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.)—

(A) the term “catfish” may only be considered to be a common or usual name (or part thereof) for fish classified within the family Ictaluridae; and

(B) only labeling or advertising for fish classified within that family may include the term “catfish”.

(2) Omitted

(b) Ginseng labeling

(1) In general

Notwithstanding any other provision of law, for purposes of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.)—

(A) the term “ginseng” may only be considered to be a common or usual name (or part thereof) for any herb or herbal ingredient derived from a plant classified within the genus *Panax*; and

(B) only labeling or advertising for herbs or herbal ingredients classified within that genus may include the term “ginseng”.

(2) Omitted

(Pub. L. 107–171, title X, §10806, May 13, 2002, 116 Stat. 526.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (a)(1), (b)(1), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see section 301 of this title and Tables.

CODIFICATION

Section is comprised of section 10806 of Pub. L. 107–171. Subsecs. (a)(2) and (b)(2) of section 10806 of Pub. L. 107–171 amended section 343 of this title.

Section was enacted as part of the Farm Security and Rural Investment Act of 2002, and not as part of Federal Food, Drug, and Cosmetic Act which comprises this chapter.

SUBCHAPTER III—PROHIBITED ACTS AND PENALTIES

§ 331. Prohibited acts

The following acts and the causing thereof are prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, tobacco product, or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device, tobacco product, or cosmetic in interstate commerce.

(c) The receipt in interstate commerce of any food, drug, device, tobacco product, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(d) The introduction or delivery for introduction into interstate commerce of any article in violation of section 344, 350d, 355, or 360bbb–3 of this title.

(e) The refusal to permit access to or copying of any record as required by section 350a, 350c, 350f(j), 350e, 354, 360bbb–3, 373, 374(a), 379aa, or 379aa–1 of this title; or the failure to establish or maintain any record, or make any report, required under section 350a, 350c(b), 350f, 350e, 354, 355(i) or (k), 360b(a)(4)(C), 360b(j), (l) or (m), 360ccc–1(i), 360e(f), 360i, 360bbb–3, 379aa, 379aa–1, 387i, or 387t of this title or the refusal to permit access to or verification or copying of any such required record; or the violation of any record-keeping requirement under section 2223¹ of this title (except when such violation is committed by a farm).

(f) The refusal to permit entry or inspection as authorized by section 374 of this title.

(g) The manufacture within any Territory of any food, drug, device, tobacco product, or cosmetic that is adulterated or misbranded.

(h) The giving of a guaranty or undertaking referred to in section 333(c)(2) of this title, which guaranty or undertaking is false, except by a person who relied upon a guaranty or undertaking to the same effect signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the food, drug, device, tobacco product, or cosmetic; or the giving of a guaranty or undertaking referred to in section 333(c)(3) of this title, which guaranty or undertaking is false.

(i)(1) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of section 344 or 379e of this title.

(2) Making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit drug.

(3) The doing of any act which causes a drug to be a counterfeit drug, or the sale or dispensing,

¹ See References in Text note below.

or the holding for sale or dispensing, of a counterfeit drug.

(j) The using by any person to his own advantage, or revealing, other than to the Secretary or officers or employees of the Department, or to the courts when relevant in any judicial proceeding under this chapter, any information acquired under authority of section 344, 348, 350a, 350c, 355, 360, 360b, 360c, 360d, 360e, 360f, 360h, 360i, 360j, 360ccc, 360ccc-1, 360ccc-2, 374, 379, 379e, 387d, 387e, 387f, 387g, 387h, 387i, or 387t(b) of this title concerning any method or process which as a trade secret is entitled to protection; or the violating of section 346a(i)(2) of this title or any regulation issued under that section.² This paragraph does not authorize the withholding of information from either House of Congress or from, to the extent of matter within its jurisdiction, any committee or subcommittee of such committee or any joint committee of Congress or any subcommittee of such joint committee.

(k) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device, tobacco product, or cosmetic, if such act is done while such article is held for sale (whether or not the first sale) after shipment in interstate commerce and results in such article being adulterated or misbranded.

(l) Repealed. Pub. L. 105-115, title IV, § 421, Nov. 21, 1997, 111 Stat. 2380.

(m) The sale or offering for sale of colored oleomargarine or colored margarine, or the possession or serving of colored oleomargarine or colored margarine in violation of subsections (b) or (c) of section 347 of this title.

(n) The using, in labeling, advertising or other sales promotion of any reference to any report or analysis furnished in compliance with section 374 of this title.

(o) In the case of a prescription drug distributed or offered for sale in interstate commerce, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable State law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved by the Secretary. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter.

(p) The failure to register in accordance with section 360 or 387e of this title, the failure to provide any information required by section 360(j), 360(k), 387e(i), or 387e(j) of this title, or the failure to provide a notice required by section 360(j)(2) or 387e(i)(3) of this title.

(q)(1) The failure or refusal—

(A) to comply with any requirement prescribed under section 360h, 360j(g), 387c(b), 387g, 387h, or 387o of this title;

(B) to furnish any notification or other material or information required by or under section 360i, 360j(g), 387d, 387i, or 387t of this title; or

(C) to comply with a requirement under section 360l or 387m of this title.

(2) With respect to any device or tobacco product, the submission of any report that is required by or under this chapter that is false or misleading in any material respect.

(r) The movement of a device or tobacco product in violation of an order under section 334(g) of this title or the removal or alteration of any mark or label required by the order to identify the device or tobacco product as detained.

(s) The failure to provide the notice required by section 350a(c) or 350a(e) of this title, the failure to make the reports required by section 350a(f)(1)(B) of this title, the failure to retain the records required by section 350a(b)(4) of this title, or the failure to meet the requirements prescribed under section 350a(f)(3) of this title.

(t) The importation of a drug in violation of section 381(d)(1) of this title, the sale, purchase, or trade of a drug or drug sample or the offer to sell, purchase, or trade a drug or drug sample in violation of section 353(c) of this title, the sale, purchase, or trade of a coupon, the offer to sell, purchase, or trade such a coupon, or the counterfeiting of such a coupon in violation of section 353(c)(2) of this title, the distribution of a drug sample in violation of section 353(d) of this title or the failure to otherwise comply with the requirements of section 353(d) of this title, or the distribution of drugs in violation of section 353(e) of this title or the failure to otherwise comply with the requirements of section 353(e) of this title.

(u) The failure to comply with any requirements of the provisions of, or any regulations or orders of the Secretary, under section 360b(a)(4)(A), 360b(a)(4)(D), or 360b(a)(5) of this title.

(v) The introduction or delivery for introduction into interstate commerce of a dietary supplement that is unsafe under section 350b of this title.

(w) The making of a knowingly false statement in any statement, certificate of analysis, record, or report required or requested under section 381(d)(3) of this title; the failure to submit a certificate of analysis as required under such section; the failure to maintain records or to submit records or reports as required by such section; the release into interstate commerce of any article or portion thereof imported into the United States under such section or any finished product made from such article or portion, except for export in accordance with section 381(e) or 382 of this title, or with section 262(h) of title 42; or the failure to so export or to destroy such an article or portions thereof, or such a finished product.

(x) The falsification of a declaration of conformity submitted under section 360d(c) of this title or the failure or refusal to provide data or information requested by the Secretary under paragraph (3) of such section.

(y) In the case of a drug, device, or food—

(1) the submission of a report or recommendation by a person accredited under section 360m of this title that is false or misleading in any material respect;

(2) the disclosure by a person accredited under section 360m of this title of confidential

² So in original.

commercial information or any trade secret without the express written consent of the person who submitted such information or secret to such person; or

(3) the receipt by a person accredited under section 360m of this title of a bribe in any form or the doing of any corrupt act by such person associated with a responsibility delegated to such person under this chapter.

(z) Omitted.

(aa) The importation of a prescription drug in violation of section 384 of this title, the falsification of any record required to be maintained or provided to the Secretary under such section, or any other violation of regulations under such section.

(bb) The transfer of an article of food in violation of an order under section 334(h) of this title, or the removal or alteration of any mark or label required by the order to identify the article as detained.

(cc) The importing or offering for import into the United States of an article of food by, with the assistance of, or at the direction of, a person debarred under section 335a(b)(3) of this title.

(dd) The failure to register in accordance with section 350d of this title.

(ee) The importing or offering for import into the United States of an article of food in violation of the requirements under section 381(m) of this title.

(ff) The importing or offering for import into the United States of a drug or device with respect to which there is a failure to comply with a request of the Secretary to submit to the Secretary a statement under section 381(o) of this title.

(gg) The knowing failure to comply with paragraph (7)(E) of section 374(g) of this title; the knowing inclusion by a person accredited under paragraph (2) of such section of false information in an inspection report under paragraph (7)(A) of such section; or the knowing failure of such a person to include material facts in such a report.

(hh) The failure by a shipper, carrier by motor vehicle or rail vehicle, receiver, or any other person engaged in the transportation of food to comply with the sanitary transportation practices prescribed by the Secretary under section 350e of this title.

(ii) The falsification of a report of a serious adverse event submitted to a responsible person (as defined under section 379aa or 379aa-1 of this title) or the falsification of a serious adverse event report (as defined under section 379aa or 379aa-1 of this title) submitted to the Secretary.

(jj)(1) The failure to submit the certification required by section 282(j)(5)(B) of title 42, or knowingly submitting a false certification under such section.

(2) The failure to submit clinical trial information required under subsection (j) of section 282 of title 42.

(3) The submission of clinical trial information under subsection (j) of section 282 of title 42 that is false or misleading in any particular under paragraph (5)(D) of such subsection (j).

(kk) The dissemination of a television advertisement without complying with section 353b of this title.

(ll) The introduction or delivery for introduction into interstate commerce of any food to which has been added a drug approved under section 355 of this title, a biological product licensed under section 262 of title 42, or a drug or a biological product for which substantial clinical investigations have been instituted and for which the existence of such investigations has been made public, unless—

(1) such drug or such biological product was marketed in food before any approval of the drug under section 355 of this title, before licensure of the biological product under such section 262 of title 42, and before any substantial clinical investigations involving the drug or the biological product have been instituted;

(2) the Secretary, in the Secretary's discretion, has issued a regulation, after notice and comment, approving the use of such drug or such biological product in the food;

(3) the use of the drug or the biological product in the food is to enhance the safety of the food to which the drug or the biological product is added or applied and not to have independent biological or therapeutic effects on humans, and the use is in conformity with—

(A) a regulation issued under section 348 of this title prescribing conditions of safe use in food;

(B) a regulation listing or affirming conditions under which the use of the drug or the biological product in food is generally recognized as safe;

(C) the conditions of use identified in a notification to the Secretary of a claim of exemption from the premarket approval requirements for food additives based on the notifier's determination that the use of the drug or the biological product in food is generally recognized as safe, provided that the Secretary has not questioned the general recognition of safety determination in a letter to the notifier;

(D) a food contact substance notification that is effective under section 348(h) of this title; or

(E) such drug or biological product had been marketed for smoking cessation prior to September 27, 2007; or

(4) the drug is a new animal drug whose use is not unsafe under section 360b of this title.

(mm) The failure to submit a report or provide a notification required under section 350f(d) of this title.

(nn) The falsification of a report or notification required under section 350f(d) of this title.

(oo) The sale of tobacco products in violation of a no-tobacco-sale order issued under section 333(f) of this title.

(pp) The introduction or delivery for introduction into interstate commerce of a tobacco product in violation of section 387k of this title.

(qq)(1) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp (including tax stamp), tag, label, or other identification device upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

(2) Making, selling, disposing of, or keeping in possession, control, or custody, or concealing

any punch, die, plate, stone, or other item that is designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any tobacco product or container or labeling thereof so as to render such tobacco product a counterfeit tobacco product.

(3) The doing of any act that causes a tobacco product to be a counterfeit tobacco product, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit tobacco product.

(rr) The charitable distribution of tobacco products.

(ss) The failure of a manufacturer or distributor to notify the Attorney General and the Secretary of the Treasury of their knowledge of tobacco products used in illicit trade.

(tt) Making any express or implied statement or representation directed to consumers with respect to a tobacco product, in a label or labeling or through the media or advertising, that either conveys, or misleads or would mislead consumers into believing, that—

(1) the product is approved by the Food and Drug Administration;

(2) the Food and Drug Administration deems the product to be safe for use by consumers;

(3) the product is endorsed by the Food and Drug Administration for use by consumers; or

(4) the product is safe or less harmful by virtue of—

(A) its regulation or inspection by the Food and Drug Administration; or

(B) its compliance with regulatory requirements set by the Food and Drug Administration;

including any such statement or representation rendering the product misbranded under section 387c of this title.

(uu) The operation of a facility that manufactures, processes, packs, or holds food for sale in the United States if the owner, operator, or agent in charge of such facility is not in compliance with section 350g of this title.

(vv) The failure to comply with the requirements under section 350h of this title.

(ww) The failure to comply with section 350i of this title.

(xx) The refusal or failure to follow an order under section 350f of this title.

(yy) The knowing and willful failure to comply with the notification requirement under section 350f(h) of this title.

(zz) The importation or offering for importation of a food if the importer (as defined in section 384a of this title) does not have in place a foreign supplier verification program in compliance with such section 384a of this title.

(June 25, 1938, ch. 675, §301, 52 Stat. 1042; Dec. 22, 1941, ch. 613, §1, 55 Stat. 851; July 6, 1945, ch. 281, §1, 59 Stat. 463; Mar. 10, 1947, ch. 16, §1, 61 Stat. 11; June 24, 1948, ch. 613, §1, 62 Stat. 582; Mar. 16, 1950, ch. 61, §3(b), 64 Stat. 20; Aug. 7, 1953, ch. 350, §2, 67 Stat. 477; Pub. L. 85-929, §5, Sept. 6, 1958, 72 Stat. 1788; Pub. L. 86-618, title I, §§104, 105(a), July 12, 1960, 74 Stat. 403; Pub. L. 87-781, title I, §§103(c), 104(e)(1), 106(c), 114(a), title III, §304, Oct. 10, 1962, 76 Stat. 784, 785, 788, 791, 795; Pub. L. 89-74, §§5, 9(c), July 15, 1965, 79 Stat. 232, 235;

Pub. L. 90-399, §103, July 13, 1968, 82 Stat. 352; Pub. L. 90-639, §2(b), Oct. 24, 1968, 82 Stat. 1361; Pub. L. 91-513, title II, §701(a), Oct. 27, 1970, 84 Stat. 1281; Pub. L. 92-387, §4(e), Aug. 16, 1972, 86 Stat. 562; Pub. L. 94-295, §§3(b), 4(b)(1), 7(b), May 28, 1976, 90 Stat. 576, 580, 582; Pub. L. 96-359, §5, Sept. 26, 1980, 94 Stat. 1193; Pub. L. 99-570, title IV, §4014(b)(2), Oct. 27, 1986, 100 Stat. 3207-120; Pub. L. 100-293, §7(a), Apr. 22, 1988, 102 Stat. 99; Pub. L. 101-502, §5(j), Nov. 3, 1990, 104 Stat. 1289; Pub. L. 101-508, title IV, §4755(c)(2), Nov. 5, 1990, 104 Stat. 1388-210; Pub. L. 102-300, §3(a)(1), June 16, 1992, 106 Stat. 238; Pub. L. 102-571, title I, §107(2), (3), Oct. 29, 1992, 106 Stat. 4499; Pub. L. 103-80, §3(c), Aug. 13, 1993, 107 Stat. 775; Pub. L. 103-396, §2(b)(1), Oct. 22, 1994, 108 Stat. 4154; Pub. L. 103-417, §10(b), Oct. 25, 1994, 108 Stat. 4332; Pub. L. 104-134, title II, §2103, Apr. 26, 1996, 110 Stat. 1321-319; Pub. L. 104-170, title IV, §403, Aug. 3, 1996, 110 Stat. 1514; Pub. L. 104-250, §5(d), Oct. 9, 1996, 110 Stat. 3156; Pub. L. 105-115, title I, §125(a)(2)(A), (C), (b)(2)(B), title II, §§204(b), 210(c), title IV, §§401(b), 421, Nov. 21, 1997, 111 Stat. 2325, 2336, 2345, 2364, 2380; Pub. L. 106-387, §1(a) [title VII, §745(d)(1)], Oct. 28, 2000, 114 Stat. 1549, 1549A-39; Pub. L. 107-188, title III, §§303(b), 304(d), 305(b), 306(c), 307(b), 321(b)(2), 322(b), June 12, 2002, 116 Stat. 664, 666, 668, 670, 672, 676, 677; Pub. L. 107-250, title II, §201(d), Oct. 26, 2002, 116 Stat. 1609; Pub. L. 108-136, div. A, title XVI, §1603(c), Nov. 24, 2003, 117 Stat. 1690; Pub. L. 108-173, title XI, §1121(b)(1), Dec. 8, 2003, 117 Stat. 2469; Pub. L. 108-214, §2(b)(2)(A), Apr. 1, 2004, 118 Stat. 575; Pub. L. 108-282, title I, §102(b)(5)(C), (D), Aug. 2, 2004, 118 Stat. 902; Pub. L. 109-59, title VII, §7202(d), (e), Aug. 10, 2005, 119 Stat. 1913; Pub. L. 109-462, §§2(c), 3(b), 4(a), Dec. 22, 2006, 120 Stat. 3472, 3475; Pub. L. 110-85, title VIII, §801(b)(1), title IX, §§901(d)(1), 912(a), title X, §1005(d), Sept. 27, 2007, 121 Stat. 920, 939, 951, 968; Pub. L. 111-31, div. A, title I, §103(b), June 22, 2009, 123 Stat. 1833; Pub. L. 111-353, title I, §§102(d)(1), 103(e), 105(c), 106(d), title II, §§204(j)(1), 206(d), 211(b), (c), title III, §301(b), Jan. 4, 2011, 124 Stat. 3889, 3898, 3904, 3906, 3937, 3943, 3953, 3954.)

REFERENCES IN TEXT

Section 2223 of this title, referred to in par. (e), was in the original “section 204 of the FDA Food Safety Modernization Act”, meaning section 204 of Pub. L. 111-353, which enacted section 2223 of this title and amended this section and section 381 of this title.

AMENDMENTS

2011—Par. (d). Pub. L. 111-353, §102(d)(1), inserted “350d,” after “34d.”

Par. (e). Pub. L. 111-353, §§204(j)(1), 211(c), substituted “350f(j)” for “350f(g)” and inserted before period at end “; or the violation of any recordkeeping requirement under section 2223 of this title (except when such violation is committed by a farm)”.

Par. (uu). Pub. L. 111-353, §103(e), added par. (uu).

Par. (vv). Pub. L. 111-353, §105(c), added par. (vv).

Par. (ww). Pub. L. 111-353, §106(d), added par. (ww).

Par. (xx). Pub. L. 111-353, §206(d), added par. (xx).

Par. (yy). Pub. L. 111-353, §211(b), added par. (yy).

Par. (zz). Pub. L. 111-353, §301(b), added par. (zz).

2009—Pars. (a) to (c). Pub. L. 111-31, §103(b)(1)-(3), inserted “tobacco product,” after “device.”

Par. (e). Pub. L. 111-31, §103(b)(4)(B), which directed substitution of “379aa-1, 387i, or 387t of this title or the refusal to permit access to” for “or 379aa-1 of this title or the refusal to permit access to”, was executed by

making the substitution for “or 379aa-1 of this title, or the refusal to permit access to”, to reflect the probable intent of Congress.

Pub. L. 111-31, § 103(b)(4)(A), struck out period after “360ccc-1(i)”.

Pars. (g), (h). Pub. L. 111-31, § 103(b)(5), (6), inserted “tobacco product,” after “device.”

Par. (j). Pub. L. 111-31, § 103(b)(7), struck out period after “360ccc-2” and substituted “379, 379e, 387d, 387e, 387f, 387g, 387h, 387i, or 387t(b)” for “379, or 379e”.

Par. (k). Pub. L. 111-31, § 103(b)(8), inserted “tobacco product,” after “device.”

Par. (p). Pub. L. 111-31, § 103(b)(9), added par. (p) and struck out former par. (p) which read as follows: “The failure to register in accordance with section 360 of this title, the failure to provide any information required by section 360(j) or 360(k) of this title, or the failure to provide a notice required by section 360(j)(2) of this title.”

Par. (q)(1). Pub. L. 111-31, § 103(b)(10), added subpar. (1) and struck out former subpar. (1) which read as follows: “The failure or refusal to (A) comply with any requirement prescribed under section 360h or 360j(g) of this title, (B) furnish any notification or other material or information required by or under section 360i or 360j(g) of this title, or (C) comply with a requirement under section 360l of this title.”

Par. (q)(2). Pub. L. 111-31, § 103(b)(11), substituted “device or tobacco product,” for “device.”

Par. (r). Pub. L. 111-31, § 103(b)(12), inserted “or tobacco product” after “device” in two places.

Pars. (oo) to (tt). Pub. L. 111-31, § 103(b)(13), added pars. (oo) to (tt).

2007—Par. (e). Pub. L. 110-85, § 1005(d)(1), substituted “350c, 350f(g),” for “350c,” and “350c(b), 350f” for “350c(b)”.

Par. (jj). Pub. L. 110-85, § 801(b)(1), added par. (jj).

Par. (kk). Pub. L. 110-85, § 901(d)(1), added par. (kk).

Par. (ll). Pub. L. 110-85, § 912(a), added par. (ll).

Pars. (mm), (nn). Pub. L. 110-85, § 1005(d)(2), added pars. (mm) and (nn).

2006—Par. (e). Pub. L. 109-462, § 3(b), substituted “374(a), 379aa, or 379aa-1” for “374(a), or 379aa” and “360bbb-3, 379aa, or 379aa-1” for “360bbb-3, or 379aa”.

Pub. L. 109-462, § 2(c), substituted “, 374(a), or 379aa” for “, or 374(a)” and “, 360bbb-3, or 379aa” for “, or 360bbb-3”.

Par. (ii). Pub. L. 109-462, § 4(a), added par. (ii).

2005—Par. (e). Pub. L. 109-59, § 7202(d), inserted “350e,” before “354,” in two places.

Par. (hh). Pub. L. 109-59, § 7202(e), added par. (hh).

2004—Par. (e). Pub. L. 108-282, § 102(b)(5)(C), which directed the substitution of “360b(a)(4)(C), 360b(j), (l) or (m), 360ccc-1(i),” for “360b(a)(4)(C), 360b(j), (l) or (m)” was executed by making the substitution for “360b(a)(4)(C), 360b(j), (l), or (m)”, to reflect the probable intent of Congress.

Par. (j). Pub. L. 108-282, § 102(b)(5)(D), substituted “360j, 360ccc, 360ccc-1, 360ccc-2,” for “360j”.

Par. (gg). Pub. L. 108-214 amended par. (gg) generally. Prior to amendment, text read as follows: “The knowing failure of a person accredited under paragraph (2) of section 374(g) of this title to comply with paragraph (7)(E) of such section; the knowing inclusion by such a person of false information in an inspection report under paragraph (7)(A) of such section; or the knowing failure of such a person to include material facts in such a report.”

2003—Par. (d). Pub. L. 108-136 substituted “section 344, 355, or 360bbb-3” for “section 344 or 355”.

Par. (e). Pub. L. 108-136 inserted “360bbb-3,” after “350c, 354,” and substituted “360i, or 360bbb-3” for “or 360i”.

Par. (aa). Pub. L. 108-173 substituted “prescription drug in violation of section 384” for “covered product in violation of section 384”.

2002—Par. (e). Pub. L. 107-188, § 306(c)(1), substituted “by section 350a, 350c, 354, 373, or 374(a) of this title” for “by section 350a, 354, or 373 of this title” and “under section 350a, 350c(b)” for “under section 350a”.

Par. (j). Pub. L. 107-188, § 306(c)(2), inserted “350c,” after “350a.”

Par. (w). Pub. L. 107-188, § 322(b), amended par. (w) generally. Prior to amendment, par. (w) read as follows: “The making of a knowingly false statement in any record or report required or requested under subparagraph (A) or (B) of section 381(d)(3) of this title, the failure to submit or maintain records as required by sections 381(d)(3)(A) and 381(d)(3)(B) of this title, the release into interstate commerce of any article imported into the United States under section 381(d)(3) of this title or any finished product made from such article (except for export in accordance with section 381(e) or 382 of this title or section 262(h) of title 42), or the failure to export or destroy any component, part or accessory not incorporated into a drug, biological product or device that will be exported in accordance with section 381(e) or 382 of this title or section 262(h) of title 42.”

Par. (bb). Pub. L. 107-188, § 303(b), added par. (bb).

Par. (cc). Pub. L. 107-188, § 304(d), added par. (cc).

Par. (dd). Pub. L. 107-188, § 305(b), added par. (dd).

Par. (ee). Pub. L. 107-188, § 307(b), added par. (ee).

Par. (ff). Pub. L. 107-188, § 321(b)(2), added par. (ff).

Par. (gg). Pub. L. 107-250 added par. (gg).

2000—Par. (aa). Pub. L. 106-387 added par. (aa).

1997—Par. (e). Pub. L. 105-115, § 125(b)(2)(B), struck out “357(d) or (g),” after “355(i) or (k),”.

Par. (i)(1). Pub. L. 105-115, § 125(a)(2)(C), struck out “, 356, 357,” before “or 379e of this title”.

Par. (j). Pub. L. 105-115, § 125(a)(2)(A), struck out “356, 357,” before “360,”.

Par. (l). Pub. L. 105-115, § 421, struck out par. (l) which read as follows: “The using, on the labeling of any drug or device or in any advertising relating to such drug or device, of any representation or suggestion that approval of an application with respect to such drug or device is in effect under section 355, 360e, or 360j(g) of this title, as the case may be, or that such drug or device complies with the provisions of such section.”

Par. (x). Pub. L. 105-115, § 204(b), added par. (x).

Par. (y). Pub. L. 105-115, § 210(c), added par. (y).

Par. (z). Pub. L. 105-115, § 401(b), temporarily added par. (z) which related to dissemination of information in violation of section 360aaa of this title. See Effective and Termination Dates of 1997 Amendment note below.

1996—Par. (e). Pub. L. 104-250 inserted “, 354,” before “or 373 of this title” and “354,” before “355(i) or (k)”.

Par. (j). Pub. L. 104-170 inserted before period at end of first sentence “; or the violating of section 346a(i)(2) of this title or any regulation issued under that section.”

Pars. (u) to (w). Pub. L. 104-134 redesignated par. (u) relating to introduction into interstate commerce of unsafe dietary supplement as (v) and added par. (w).

1994—Par. (e). Pub. L. 103-396, § 2(b)(1)(A), substituted “357(d) or (g), 360b(a)(4)(C),” for “357(d) or (g),”.

Par. (u). Pub. L. 103-417 added par. (u) relating to introduction into interstate commerce of unsafe dietary supplement.

Pub. L. 103-396, § 2(b)(1)(B), added par. (u) relating to failure to comply with regulations or orders of Secretary.

1993—Par. (j). Pub. L. 103-80, § 3(c)(1), substituted “379, or 379e” for “379e, or 379”.

Par. (s). Pub. L. 103-80, § 3(c)(2), substituted “350a(e)” for “350a(d)”.

1992—Pars. (i)(1), (j). Pub. L. 102-571 substituted “379e” for “376”.

Par. (q)(1)(C). Pub. L. 102-300 added cl. (C).

1990—Par. (e). Pub. L. 101-502 substituted “or (k)” for “or (j)”.

Par. (j). Pub. L. 101-508 inserted at end “This paragraph does not authorize the withholding of information from either House of Congress or from, to the extent of matter within its jurisdiction, any committee or subcommittee of such committee or any joint committee of Congress or any subcommittee of such joint committee.”

1988—Par. (t). Pub. L. 100-293 added par. (t).

1986—Par. (s). Pub. L. 99-570 amended par. (s) generally. Prior to amendment, par. (s) read as follows: “The

failure to provide the notice required by section 350a(b) or 350a(c), the failure to make the reports required by section 350a(d)(1)(B), or the failure to meet the requirements prescribed under section 350a(d)(2).”

1980—Par. (e). Pub. L. 96-359, § 5(b), inserted reference to section 350a of this title in two places.

Par. (j). Pub. L. 96-359, § 5(c), inserted reference to section 350a of this title.

Par. (s). Pub. L. 96-359, § 5(a), added par. (s).

1976—Par. (e). Pub. L. 94-295, § 3(b)(2), inserted references to sections 360e(f) and 360i of this title.

Par. (j). Pub. L. 94-295, § 3(b)(3), inserted references to sections 360, 360c, 360d, 360e, 360f, 360h, 360i, 360j, and 379 of this title.

Par. (l). Pub. L. 94-295, § 3(b)(4), substituted “drug or device” for “drug” wherever appearing, and inserted references to sections 360e and 360j(g) of this title.

Par. (p). Pub. L. 94-295, § 4(b)(1), substituted “section 360(j) or 360(k) of this title,” for “section 360(j) of this title.”

Par. (q). Pub. L. 94-295, § 3(b)(1), added par. (q).

Par. (r). Pub. L. 94-295, § 7(b), added par. (r).

1972—Par. (p). Pub. L. 92-387 added failure to provide information required by section 360(j) of this title, and failure to provide notice required by section 360(j)(2) of this title as prohibited acts.

1970—Par. (q). Pub. L. 91-513 struck out par. (q) which set out penalties for illegal manufacture, sale, disposition, possession and other traffic in stimulant and depressant drugs. See section 801 et seq. of this title.

1968—Par. (e). Pub. L. 90-399, § 103(1), struck out “or” before “357(d) or (g)” and inserted “, or 360b(j), (l), or (m)” after “357(d) or (g)”. Amendment striking out “or” was executed as described, notwithstanding directory language that “or” before “357,” be stricken out, to reflect the probable intent of Congress.

Par. (j). Pub. L. 90-399, § 103(2), inserted reference to section 360b of this title.

Par. (q). Pub. L. 90-639 divided cl. (3), which referred simply to possession in violation of section 360a(c) of this title, into subcls. (A) and (B) which refer, respectively, to possession in violation of section 360a(c)(1) of this title and possession in violation of section 360a(c)(2) of this title.

1965—Par. (i). Pub. L. 89-74, § 9(c), designated existing provisions as subpar. (1) and added subpars. (2) and (3).

Par. (q). Pub. L. 89-74, § 5, added par. (q).

1962—Par. (e). Pub. L. 87-781, §§ 103(c), 106(c), prohibited the failure to establish or maintain any record, or make any report, required under sections 355(i) or (j) and 507(d) or (g) of this title, or the refusal to permit access to, or verification or copying of, any such required record.

Par. (l). Pub. L. 87-781, § 104(e)(1), inserted “approval of” before “an application”, and substituted “in effect” for “effective”.

Par. (o). Pub. L. 87-781, § 114(a), added par. (o).

Par. (p). Pub. L. 87-781, § 304, added par. (p).

1960—Par. (i). Pub. L. 86-618, § 105(a), struck out references to sections 346(b), 354, and 364 of this title and inserted reference to section 376 of this title.

Par. (j). Pub. L. 86-618, § 104, inserted reference to section 376 of this title.

1958—Par. (j). Pub. L. 85-929, inserted reference to section 348 of this title.

1953—Par. (n). Act Aug. 7, 1953, added par. (n).

1950—Par. (m). Act Mar. 16, 1950, added par. (m).

1948—Par. (k). Act June 24, 1948, inserted “(whether or not the first sale)” so as to make it clear that this subsection is not limited to the case where the act occurs while the article is held for the first sale after interstate shipment, and extended coverage of subsection to acts which result in adulteration.

1947—Par. (j). Act Mar. 10, 1947, inserted reference to sections 356 and 357 of this title.

1945—Par. (i). Act July 6, 1945, inserted reference to section 357 of this title.

1941—Par. (i). Act Dec. 22, 1941, inserted reference to section 356 of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 103(e) of Pub. L. 111-353 effective 18 months after Jan. 4, 2011, and applicable to a

small business (as defined in the regulations promulgated under section 350g(n) of this title) beginning on the date that is 6 months after the effective date of such regulations and to a very small business (as defined in such regulations) beginning on the date that is 18 months after the effective date of such regulations, see section 103(i) of Pub. L. 111-353, set out as an Effective Date note under section 350g of this title.

Pub. L. 111-353, title III, § 301(d), Jan. 4, 2011, 124 Stat. 3955, provided that: “The amendments made by this section [enacting section 384a of this title and amending this section and section 381 of this title] shall take effect 2 years after the date of enactment of this Act [Jan. 4, 2011].”

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-85, title IX, § 909, Sept. 27, 2007, 121 Stat. 950, provided that:

“(a) EFFECTIVE DATE.—This subtitle [subtitle A (§§ 901-909) of title IX of Pub. L. 110-85, enacting sections 353b and 355-1 of this title, amending this section, sections 333, 352, and 355 of this title, and section 262 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 352, 355, and 355a of this title] takes effect 180 days after the date of the enactment of this Act [Sept. 27, 2007].

“(b) DRUGS DEEMED TO HAVE RISK EVALUATION AND MITIGATION STRATEGIES.—

“(1) IN GENERAL.—A drug that was approved before the effective date of this Act [probably means “this subtitle”, see above] is, in accordance with paragraph (2), deemed to have in effect an approved risk evaluation and mitigation strategy under section 505-1 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355-1] (as added by section 901) (referred to in this section as the ‘Act’) if there are in effect on the effective date of this Act elements to assure safe use—

“(A) required under section 314.520 or section 601.42 of title 21, Code of Federal Regulations; or

“(B) otherwise agreed to by the applicant and the Secretary for such drug.

“(2) ELEMENTS OF STRATEGY; ENFORCEMENT.—The approved risk evaluation and mitigation strategy in effect for a drug under paragraph (1)—

“(A) is deemed to consist of the timetable required under section 505-1(d) and any additional elements under subsections (e) and (f) of such section in effect for such drug on the effective date of this Act; and

“(B) is subject to enforcement by the Secretary to the same extent as any other risk evaluation and mitigation strategy under section 505-1 of the Act, except that sections 303(f)(4) and 502(y) and (z) of the Act [21 U.S.C. 333(f)(4), 352(y), (z)] (as added by section 902) shall not apply to such strategy before the Secretary has completed review of, and acted on, the first assessment of such strategy under such section 505-1.

“(3) SUBMISSION.—Not later than 180 days after the effective date of this Act, the holder of an approved application for which a risk evaluation and mitigation strategy is deemed to be in effect under paragraph (1) shall submit to the Secretary a proposed risk evaluation and mitigation strategy. Such proposed strategy is subject to section 505-1 of the Act as if included in such application at the time of submission of the application to the Secretary.”

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 2(c) of Pub. L. 109-462 effective 1 year after Dec. 22, 2006, see section 2(e)(1) of Pub. L. 109-462, set out as a note under section 352 of this title.

Amendment by section 3(b) of Pub. L. 109-462 effective 1 year after Dec. 22, 2006, see section 3(d)(1) of Pub. L. 109-462, set out as a note under section 343 of this title.

Pub. L. 109-462, § 4(b), Dec. 22, 2006, 120 Stat. 3475, provided that: “The amendment made by this section [amending this section] shall take effect 1 year after the date of enactment of this Act [Dec. 22, 2006].”

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-59, title VII, §7204, Aug. 10, 2005, 119 Stat. 1914, provided that: “This subtitle [subtitle B (§§7201-7204) of title VII of Pub. L. 109-59, enacting section 350e of this title, amending this section, sections 342 and 373 of this title, and section 5701 of Title 49, Transportation, omitting sections 5702 to 5714 of Title 49, and enacting provisions set out as a note under section 301 of this title] takes effect on October 1, 2005.”

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-188, title III, §321(c), June 12, 2002, 116 Stat. 676, provided that: “The amendments made by this section [amending this section and sections 360 and 381 of this title] take effect upon the expiration of the 180-day period beginning on the date of the enactment of this Act [June 12, 2002].”

Pub. L. 107-188, title III, §322(c), June 12, 2002, 116 Stat. 678, provided that: “The amendments made by this section [amending this section and section 381 of this title] take effect upon the expiration of the 90-day period beginning on the date of the enactment of this Act [June 12, 2002].”

EFFECTIVE AND TERMINATION DATES OF 1997
AMENDMENT

Amendment by sections 204, 210, and 421 of Pub. L. 105-115 effective 90 days after Nov. 21, 1997, except as otherwise provided, see section 501 of Pub. L. 105-115, set out as a note under section 321 of this title.

Amendment by section 401(b) of Pub. L. 105-115 effective 1 year after Nov. 21, 1997, or upon Secretary's issuance of final regulations pursuant to section 401(c) of Pub. L. 105-115, whichever is sooner, and ceases to be effective Sept. 30, 2006, see section 401(d), (e) of Pub. L. 105-115, set out as an Effective and Termination Dates note under former section 360aaa of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-396 effective upon adoption of final regulations under section 2(c) of Pub. L. 103-396, set out as a Regulations note under section 360b of this title, see section 2(d) of Pub. L. 103-396, set out as a note under section 360b of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4755(c)(2) of Pub. L. 101-508 provided that the amendment made by that section is effective as if included in subtitle D of title VI of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101-239, title VI, §§6601, 6602, Dec. 19, 1989, 103 Stat. 2285, see 42 U.S.C. 300aa-1 note, 300aa-10 note.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-293 effective upon expiration of 90 days after Apr. 22, 1988, see section 8(a) of Pub. L. 100-293, set out as a note under section 353 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-387 effective on first day of sixth month beginning after Aug. 16, 1972, see section 5 of Pub. L. 92-387, set out as a note under section 360 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENTS

Amendment by Pub. L. 90-399 effective on first day of thirteenth calendar month after July 13, 1968, see section 108(a) of Pub. L. 90-399, set out as an Effective Date and Transitional Provisions note under section 360b of this title.

Amendment by Pub. L. 90-639 applicable only with respect to violations of this chapter committed after Oct. 24, 1968, see section 6 of Pub. L. 90-639, set out as an Effective Date of 1968 Amendments; Transitional Provisions note under section 321 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-74 effective Feb. 1, 1966, see section 11 of Pub. L. 89-74, set out as a note under section 321 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by sections 103(c) and 106(c) of Pub. L. 87-781 effective on first day of seventh calendar month following Oct. 1962, and amendment by section 104(e)(1) of Pub. L. 87-781 effective Oct. 10, 1962, see section 107 of Pub. L. 87-781, set out as a note under section 321 of this title.

Section 114(b) of Pub. L. 87-781 provided that: “This section [amending this section] shall take effect on the first day of the seventh calendar month following the month in which this Act is enacted [October 1962].”

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-618 effective July 12, 1960, subject to provisions of section 203 of Pub. L. 86-618, see section 202 of Pub. L. 86-618, set out as a note under section 379e of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-929 effective Sept. 6, 1958, see section 6(a) of Pub. L. 85-929, set out as a note under section 342 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment by act Mar. 16, 1950, effective July 1, 1950, see section 7 of that act, set out as an Effective Date note under section 347 of this title.

REGULATIONS

Secretary of Health and Human Services to promulgate regulations to implement amendments made by section 401 of Pub. L. 105-115 not later than 1 year after Nov. 21, 1997, see section 401(c) of Pub. L. 105-115, set out as a note under section 360aaa of this title.

SAVINGS PROVISION

Amendment by Pub. L. 91-513 not to affect or abate any prosecutions for violation of law or any civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of such amendment, and all administrative proceedings pending before the Bureau of Narcotics and Dangerous Drugs [now the Drug Enforcement Administration] on Oct. 27, 1970, to be continued and brought to final determination in accord with laws and regulations in effect prior to Oct. 27, 1970, see section 702 of Pub. L. 91-513, set out as a note under section 321 of this title.

CONSTRUCTION OF 2011 AMENDMENT

Nothing in amendments by sections 103(e), 105(c), 106(d), 204(j)(1), 211(b), (c), and 301(b) of Pub. L. 111-353 to be construed to apply to certain alcohol-related facilities, see section 2206 of this title.

Nothing in amendments by Pub. L. 111-353 to be construed to alter jurisdiction and authorities established under certain other Acts or in a manner inconsistent with international agreements to which the United States is a party, see sections 2251 and 2252 of this title.

CONSTRUCTION OF 2009 AMENDMENTS

Pub. L. 111-31, div. A, title I, §103(p), June 22, 2009, 123 Stat. 1838, provided that: “Nothing in this section [amending this section and sections 333, 334, 355, 360m, 372 to 374, 375, 379a, 381, 393, 399, and 679 of this title and enacting provisions set out as notes under sections 333 and 387c of this title] is intended or shall be construed to expand, contract, or otherwise modify or amend the

existing limitations on State government authority over tribal restricted fee or trust lands.”

CONSTRUCTION OF 2002 AMENDMENTS

Pub. L. 107-188, title III, §315, June 12, 2002, 116 Stat. 675, provided that: “Nothing in this title [enacting sections 350c, 350d, 398, 399, and 679c of this title, sections 3353, 3354, 8319, and 8320 of Title 7, Agriculture, and section 247b-20 of Title 42, The Public Health and Welfare, amending this section, sections 334, 335a, 342, 343, 360, 372, 374, and 381 of this title, and section 43 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under this section and sections 341, 350c, 350d, and 381 of this title], or an amendment made by this title, shall be construed to alter the jurisdiction between the Secretaries of Agriculture and of Health and Human Services, under applicable statutes and regulations.”

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Security Administrator to Secretary of Health, Education, and Welfare [now Health and Human Services], and of Food and Drug Administration in the Department of Agriculture to Federal Security Agency, see notes set out under section 321 of this title.

§ 332. Injunction proceedings

(a) Jurisdiction of courts

The district courts of the United States and the United States courts of the Territories shall have jurisdiction, for cause shown¹ to restrain violations of section 331 of this title, except paragraphs (h), (i), and (j).

(b) Violation of injunction

In case of violation of an injunction or restraining order issued under this section, which also constitutes a violation of this chapter, trial shall be by the court, or, upon demand of the accused, by a jury.

(June 25, 1938, ch. 675, §302, 52 Stat. 1043; Pub. L. 87-781, title I, §103(d), title II, §201(c), Oct. 10, 1962, 76 Stat. 784, 793; Pub. L. 103-80, §3(d), Aug. 13, 1993, 107 Stat. 775.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103-80, §3(d)(1), struck out “, and subject to the provisions of section 17 (relating to notice to opposite party) of the Act entitled ‘An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes’, approved October 15, 1914, as amended (U.S.C., 1934 ed., title 28, sec. 381),” after “for cause shown”.

Subsec. (b). Pub. L. 103-80, §3(d)(2), struck out at end “Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of section 22 of such Act of October 15, 1914, as amended (U.S.C., 1934 ed., title 28, sec. 387).”

1962—Subsec. (a). Pub. L. 87-781, §103(d), struck out “(e),” after “paragraphs”.

Pub. L. 87-781, §201(c), struck out “(f),” after “paragraphs”.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 103(c) of Pub. L. 87-781 effective on first day of seventh calendar month following October 1962, see section 107 of Pub. L. 87-781, set out as a note under section 321 of this title.

Section 203 of title II of Pub. L. 87-781 provided that: “The amendments made by this title [amending this section and section 374 of this title and enacting provi-

sions set out as notes under sections 321 and 374 of this title] shall take effect on the date of enactment of this Act [Oct. 10, 1962].”

§ 333. Penalties

(a) Violation of section 331 of this title; second violation; intent to defraud or mislead

(1) Any person who violates a provision of section 331 of this title shall be imprisoned for not more than one year or fined not more than \$1,000, or both.

(2) Notwithstanding the provisions of paragraph (1) of this section,¹ if any person commits such a violation after a conviction of him under this section has become final, or commits such a violation with the intent to defraud or mislead, such person shall be imprisoned for not more than three years or fined not more than \$10,000, or both.

(b) Prescription drug marketing violations

(1) Notwithstanding subsection (a) of this section, any person who violates section 331(t) of this title by—

(A) knowingly importing a drug in violation of section 381(d)(1) of this title,

(B) knowingly selling, purchasing, or trading a drug or drug sample or knowingly offering to sell, purchase, or trade a drug or drug sample, in violation of section 353(c)(1) of this title,

(C) knowingly selling, purchasing, or trading a coupon, knowingly offering to sell, purchase, or trade such a coupon, or knowingly counterfeiting such a coupon, in violation of section 353(c)(2) of this title, or

(D) knowingly distributing drugs in violation of section 353(e)(2)(A) of this title,

shall be imprisoned for not more than 10 years or fined not more than \$250,000, or both.

(2) Any manufacturer or distributor who distributes drug samples by means other than the mail or common carrier whose representative, during the course of the representative's employment or association with that manufacturer or distributor, violated section 331(t) of this title because of a violation of section 353(c)(1) of this title or violated any State law prohibiting the sale, purchase, or trade of a drug sample subject to section 353(b) of this title or the offer to sell, purchase, or trade such a drug sample shall, upon conviction of the representative for such violation, be subject to the following civil penalties:

(A) A civil penalty of not more than \$50,000 for each of the first two such violations resulting in a conviction of any representative of the manufacturer or distributor in any 10-year period.

(B) A civil penalty of not more than \$1,000,000 for each violation resulting in a conviction of any representative after the second conviction in any 10-year period.

For the purposes of this paragraph, multiple convictions of one or more persons arising out of the same event or transaction, or a related series of events or transactions, shall be considered as one violation.

¹ So in original. Probably should be followed by a comma.

¹ So in original. Words “of this section” probably should not appear.

(3) Any manufacturer or distributor who violates section 331(t) of this title because of a failure to make a report required by section 353(d)(3)(E) of this title shall be subject to a civil penalty of not more than \$100,000.

(4)(A) If a manufacturer or distributor or any representative of such manufacturer or distributor provides information leading to the institution of a criminal proceeding against, and conviction of, any representative of that manufacturer or distributor for a violation of section 331(t) of this title because of a sale, purchase, or trade or offer to purchase, sell, or trade a drug sample in violation of section 353(c)(1) of this title or for a violation of State law prohibiting the sale, purchase, or trade or offer to sell, purchase, or trade a drug sample, the conviction of such representative shall not be considered as a violation for purposes of paragraph (2).

(B) If, in an action brought under paragraph (2) against a manufacturer or distributor relating to the conviction of a representative of such manufacturer or distributor for the sale, purchase, or trade of a drug or the offer to sell, purchase, or trade a drug, it is shown, by clear and convincing evidence—

(i) that the manufacturer or distributor conducted, before the institution of a criminal proceeding against such representative for the violation which resulted in such conviction, an investigation of events or transactions which would have led to the reporting of information leading to the institution of a criminal proceeding against, and conviction of, such representative for such purchase, sale, or trade or offer to purchase, sell, or trade, or

(ii) that, except in the case of the conviction of a representative employed in a supervisory function, despite diligent implementation by the manufacturer or distributor of an independent audit and security system designed to detect such a violation, the manufacturer or distributor could not reasonably have been expected to have detected such violation,

the conviction of such representative shall not be considered as a conviction for purposes of paragraph (2).

(5) If a person provides information leading to the institution of a criminal proceeding against, and conviction of, a person for a violation of section 331(t) of this title because of the sale, purchase, or trade of a drug sample or the offer to sell, purchase, or trade a drug sample in violation of section 353(c)(1) of this title, such person shall be entitled to one-half of the criminal fine imposed and collected for such violation but not more than \$125,000.

(6) Notwithstanding subsection (a) of this section, any person who is a manufacturer or importer of a prescription drug under section 384(b) of this title and knowingly fails to comply with a requirement of section 384(e) of this title that is applicable to such manufacturer or importer, respectively, shall be imprisoned for not more than 10 years or fined not more than \$250,000, or both.

(c) Exceptions in certain cases of good faith, etc.

No person shall be subject to the penalties of subsection (a)(1) of this section, (1) for having received in interstate commerce any article and

delivered it or proffered delivery of it, if such delivery or proffer was made in good faith, unless he refuses to furnish on request of an officer or employee duly designated by the Secretary the name and address of the person from whom he purchased or received such article and copies of all documents, if any there be, pertaining to the delivery of the article to him; or (2) for having violated section 331(a) or (d) of this title, if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the article, to the effect, in case of an alleged violation of section 331(a) of this title, that such article is not adulterated or misbranded, within the meaning of this chapter designating this chapter or to the effect, in case of an alleged violation of section 331(d) of this title, that such article is not an article which may not, under the provisions of section 344 or 355 of this title, be introduced into interstate commerce; or (3) for having violated section 331(a) of this title, where the violation exists because the article is adulterated by reason of containing a color additive not from a batch certified in accordance with regulations promulgated by the Secretary under this chapter, if such person establishes a guaranty or undertaking signed by, and containing the name and address of, the manufacturer of the color additive, to the effect that such color additive was from a batch certified in accordance with the applicable regulations promulgated by the Secretary under this chapter; or (4) for having violated section 331(b), (c) or (k) of this title by failure to comply with section 352(f) of this title in respect to an article received in interstate commerce to which neither section 353(a) nor 353(b)(1) of this title is applicable, if the delivery or proffered delivery was made in good faith and the labeling at the time thereof contained the same directions for use and warning statements as were contained in the labeling at the time of such receipt of such article; or (5) for having violated section 331(i)(2) of this title if such person acted in good faith and had no reason to believe that use of the punch, die, plate, stone, or other thing involved would result in a drug being a counterfeit drug, or for having violated section 331(i)(3) of this title if the person doing the act or causing it to be done acted in good faith and had no reason to believe that the drug was a counterfeit drug.

(d) Exceptions involving misbranded food

No person shall be subject to the penalties of subsection (a)(1) of this section for a violation of section 331 of this title involving misbranded food if the violation exists solely because the food is misbranded under section 343(a)(2) of this title because of its advertising.

(e) Prohibited distribution of human growth hormone

(1) Except as provided in paragraph (2), whoever knowingly distributes, or possesses with intent to distribute, human growth hormone for any use in humans other than the treatment of a disease or other recognized medical condition, where such use has been authorized by the Secretary of Health and Human Services under section 355 of this title and pursuant to the order of

a physician, is guilty of an offense punishable by not more than 5 years in prison, such fines as are authorized by title 18, or both.

(2) Whoever commits any offense set forth in paragraph (1) and such offense involves an individual under 18 years of age is punishable by not more than 10 years imprisonment, such fines as are authorized by title 18, or both.

(3) Any conviction for a violation of paragraphs (1) and (2) of this subsection shall be considered a felony violation of the Controlled Substances Act [21 U.S.C. 801 et seq.] for the purposes of forfeiture under section 413 of such Act [21 U.S.C. 853].

(4) As used in this subsection the term “human growth hormone” means somatrem, somatotropin, or an analogue of either of them.

(5) The Drug Enforcement Administration is authorized to investigate offenses punishable by this subsection.

(f) Violations related to devices

(1)(A) Except as provided in subparagraph (B), any person who violates a requirement of this chapter which relates to devices shall be liable to the United States for a civil penalty in an amount not to exceed \$15,000 for each such violation, and not to exceed \$1,000,000 for all such violations adjudicated in a single proceeding. For purposes of the preceding sentence, a person accredited under paragraph (2) of section 374(g) of this title who is substantially not in compliance with the standards of accreditation under such section, or who poses a threat to public health or fails to act in a manner that is consistent with the purposes of such section, shall be considered to have violated a requirement of this chapter that relates to devices.

(B) Subparagraph (A) shall not apply—

(i) to any person who violates the requirements of section 360i(a) or 360j(f) of this title unless such violation constitutes (I) a significant or knowing departure from such requirements, or (II) a risk to public health,

(ii) to any person who commits minor violations of section 360i(e) or 360i(g) of this title (only with respect to correction reports) if such person demonstrates substantial compliance with such section, or

(iii) to violations of section 351(a)(2)(A) of this title which involve one or more devices which are not defective.

(2)(A) Any person who introduces into interstate commerce or delivers for introduction into interstate commerce an article of food that is adulterated within the meaning of section 342(a)(2)(B) of this title or any person who does not comply with a recall order under section 350f of this title shall be subject to a civil money penalty of not more than \$50,000 in the case of an individual and \$250,000 in the case of any other person for such introduction or delivery, not to exceed \$500,000 for all such violations adjudicated in a single proceeding.

(B) This paragraph shall not apply to any person who grew the article of food that is adulterated. If the Secretary assesses a civil penalty against any person under this paragraph, the Secretary may not use the criminal authorities under this section to sanction such person for the introduction or delivery for introduction

into interstate commerce of the article of food that is adulterated. If the Secretary assesses a civil penalty against any person under this paragraph, the Secretary may not use the seizure authorities of section 334 of this title or the injunction authorities of section 332 of this title with respect to the article of food that is adulterated.

(C) In a hearing to assess a civil penalty under this paragraph, the presiding officer shall have the same authority with regard to compelling testimony or production of documents as a presiding officer has under section 346a(g)(2)(B) of this title. The third sentence of paragraph (5)(A) shall not apply to any investigation under this paragraph.

(3)(A) Any person who violates section 331(jj) of this title shall be subject to a civil monetary penalty of not more than \$10,000 for all violations adjudicated in a single proceeding.

(B) If a violation of section 331(jj) of this title is not corrected within the 30-day period following notification under section 282(j)(5)(C)(ii)² of title 42, the person shall, in addition to any penalty under subparagraph (A), be subject to a civil monetary penalty of not more than \$10,000 for each day of the violation after such period until the violation is corrected.

(4)(A) Any responsible person (as such term is used in section 355-1 of this title) that violates a requirement of section 355(o), 355(p), or 355-1 of this title shall be subject to a civil monetary penalty of—

(i) not more than \$250,000 per violation, and not to exceed \$1,000,000 for all such violations adjudicated in a single proceeding; or

(ii) in the case of a violation that continues after the Secretary provides written notice to the responsible person, the responsible person shall be subject to a civil monetary penalty of \$250,000 for the first 30-day period (or any portion thereof) that the responsible person continues to be in violation, and such amount shall double for every 30-day period thereafter that the violation continues, not to exceed \$1,000,000 for any 30-day period, and not to exceed \$10,000,000 for all such violations adjudicated in a single proceeding.

(B) In determining the amount of a civil penalty under subparagraph (A)(ii), the Secretary shall take into consideration whether the responsible person is making efforts toward correcting the violation of the requirement of section 355(o), 355(p), or 355-1 of this title for which the responsible person is subject to such civil penalty.

(5)(A) A civil penalty under paragraph (1), (2), (3), (4), or (9) shall be assessed, or a no-tobacco-sale order may be imposed, by the Secretary by an order made on the record after opportunity for a hearing provided in accordance with this subparagraph and section 554 of title 5. Before issuing such an order, the Secretary shall give written notice to the person to be assessed a civil penalty, or upon whom a no-tobacco-sale order is to be imposed, under such order of the Secretary's proposal to issue such order and provide such person an opportunity for a hearing on

² See References in Text note below.

the order. In the course of any investigation, the Secretary may issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence that relates to the matter under investigation.

(B) In determining the amount of a civil penalty, or the period to be covered by a no-tobacco-sale order, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. A no-tobacco-sale order permanently prohibiting an individual retail outlet from selling tobacco products shall include provisions that allow the outlet, after a specified period of time, to request that the Secretary compromise, modify, or terminate the order.

(C) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which may be assessed under paragraph (1), (2), (3), (4), or (9). The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(D) The Secretary may compromise, modify, or terminate, with or without conditions, any no-tobacco-sale order.

(6) Any person who requested, in accordance with paragraph (5)(A), a hearing respecting the assessment of a civil penalty or the imposition of a no-tobacco-sale order may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 60-day period beginning on the date the order making such assessment was issued, or on which the no-tobacco-sale order was imposed, as the case may be.

(7) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment becomes final, and if such person does not file a petition for judicial review of the order in accordance with paragraph (6), or

(B) after a court in an action brought under paragraph (6) has entered a final judgment in favor of the Secretary,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 60-day period referred to in paragraph (6) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(8) If the Secretary finds that a person has committed repeated violations of restrictions promulgated under section 387f(d) of this title at a particular retail outlet then the Secretary may impose a no-tobacco-sale order on that person prohibiting the sale of tobacco products in that outlet. A no-tobacco-sale order may be im-

posed with a civil penalty under paragraph (1). Prior to the entry of a no-sale order under this paragraph, a person shall be entitled to a hearing pursuant to the procedures established through regulations of the Food and Drug Administration for assessing civil money penalties, including at a retailer's request a hearing by telephone, or at the nearest regional or field office of the Food and Drug Administration, or at a Federal, State, or county facility within 100 miles from the location of the retail outlet, if such a facility is available.

(9) CIVIL MONETARY PENALTIES FOR VIOLATION OF TOBACCO PRODUCT REQUIREMENTS.—

(A) IN GENERAL.—Subject to subparagraph (B), any person who violates a requirement of this chapter which relates to tobacco products shall be liable to the United States for a civil penalty in an amount not to exceed \$15,000 for each such violation, and not to exceed \$1,000,000 for all such violations adjudicated in a single proceeding.

(B) ENHANCED PENALTIES.—

(i) Any person who intentionally violates a requirement of section 387b(5), 387b(6), 387d, 387h(c), or 387k(a) of this title, shall be subject to a civil monetary penalty of—

(I) not to exceed \$250,000 per violation, and not to exceed \$1,000,000 for all such violations adjudicated in a single proceeding; or

(II) in the case of a violation that continues after the Secretary provides written notice to such person, \$250,000 for the first 30-day period (or any portion thereof) that the person continues to be in violation, and such amount shall double for every 30-day period thereafter that the violation continues, not to exceed \$1,000,000 for any 30-day period, and not to exceed \$10,000,000 for all such violations adjudicated in a single proceeding.

(ii) Any person who violates a requirement of section 387k(g)(2)(C)(ii) or 387k(i)(1) of this title, shall be subject to a civil monetary penalty of—

(I) not to exceed \$250,000 per violation, and not to exceed \$1,000,000 for all such violations adjudicated in a single proceeding; or

(II) in the case of a violation that continues after the Secretary provides written notice to such person, \$250,000 for the first 30-day period (or any portion thereof) that the person continues to be in violation, and such amount shall double for every 30-day period thereafter that the violation continues, not to exceed \$1,000,000 for any 30-day period, and not to exceed \$10,000,000 for all such violations adjudicated in a single proceeding.

(iii) In determining the amount of a civil penalty under clause (i)(II) or (ii)(II), the Secretary shall take into consideration whether the person is making efforts toward correcting the violation of the requirements of the section for which such person is subject to such civil penalty.

(g) Violations regarding direct-to-consumer advertising

(1) With respect to a person who is a holder of an approved application under section 355 of this title for a drug subject to section 353(b) of this title or under section 262 of title 42, any such person who disseminates or causes another party to disseminate a direct-to-consumer advertisement that is false or misleading shall be liable to the United States for a civil penalty in an amount not to exceed \$250,000 for the first such violation in any 3-year period, and not to exceed \$500,000 for each subsequent violation in any 3-year period. No other civil monetary penalties in this chapter (including the civil penalty in subsection (f)(4)) shall apply to a violation regarding direct-to-consumer advertising. For purposes of this paragraph: (A) Repeated dissemination of the same or similar advertisement prior to the receipt of the written notice referred to in paragraph (2) for such advertisements shall be considered one violation. (B) On and after the date of the receipt of such a notice, all violations under this paragraph occurring in a single day shall be considered one violation. With respect to advertisements that appear in magazines or other publications that are published less frequently than daily, each issue date (whether weekly or monthly) shall be treated as a single day for the purpose of calculating the number of violations under this paragraph.

(2) A civil penalty under paragraph (1) shall be assessed by the Secretary by an order made on the record after providing written notice to the person to be assessed a civil penalty and an opportunity for a hearing in accordance with this paragraph and section 554 of title 5. If upon receipt of the written notice, the person to be assessed a civil penalty objects and requests a hearing, then in the course of any investigation related to such hearing, the Secretary may issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence that relates to the matter under investigation, including information pertaining to the factors described in paragraph (3).

(3) The Secretary, in determining the amount of the civil penalty under paragraph (1), shall take into account the nature, circumstances, extent, and gravity of the violation or violations, including the following factors:

(A) Whether the person submitted the advertisement or a similar advertisement for review under section 379h-1 of this title.

(B) Whether the person submitted the advertisement for review if required under section 353b of this title.

(C) Whether, after submission of the advertisement as described in subparagraph (A) or (B), the person disseminated or caused another party to disseminate the advertisement before the end of the 45-day comment period.

(D) Whether the person incorporated any comments made by the Secretary with regard to the advertisement into the advertisement prior to its dissemination.

(E) Whether the person ceased distribution of the advertisement upon receipt of the written notice referred to in paragraph (2) for such advertisement.

(F) Whether the person had the advertisement reviewed by qualified medical, regulatory, and legal reviewers prior to its dissemination.

(G) Whether the violations were material.

(H) Whether the person who created the advertisement or caused the advertisement to be created acted in good faith.

(I) Whether the person who created the advertisement or caused the advertisement to be created has been assessed a civil penalty under this provision within the previous 1-year period.

(J) The scope and extent of any voluntary, subsequent remedial action by the person.

(K) Such other matters, as justice may require.

(4)(A) Subject to subparagraph (B), no person shall be required to pay a civil penalty under paragraph (1) if the person submitted the advertisement to the Secretary and disseminated or caused another party to disseminate such advertisement after incorporating each comment received from the Secretary.

(B) The Secretary may retract or modify any prior comments the Secretary has provided to an advertisement submitted to the Secretary based on new information or changed circumstances, so long as the Secretary provides written notice to the person of the new views of the Secretary on the advertisement and provides a reasonable time for modification or correction of the advertisement prior to seeking any civil penalty under paragraph (1).

(5) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which may be assessed under paragraph (1). The amount of such penalty, when finally determined, or the amount charged upon in compromise, may be deducted from any sums owed by the United States to the person charged.

(6) Any person who requested, in accordance with paragraph (2), a hearing with respect to the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty, may file a petition for de novo judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 60-day period beginning on the date the order making such assessments was issued.

(7) If any person fails to pay an assessment of a civil penalty under paragraph (1)—

(A) after the order making the assessment becomes final, and if such person does not file a petition for judicial review of the order in accordance with paragraph (6), or

(B) after a court in an action brought under paragraph (6) has entered a final judgment in favor of the Secretary,

the Attorney General of the United States shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 60-day period referred to in paragraph (6) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and ap-

propriateness of such penalty shall not be subject to review.

(June 25, 1938, ch. 675, §303, 52 Stat. 1043; Oct. 26, 1951, ch. 578, §2, 65 Stat. 649; Pub. L. 86-618, title I, §105(b), July 12, 1960, 74 Stat. 403; Pub. L. 89-74, §§7, 9(d), July 15, 1965, 79 Stat. 233, 235; Pub. L. 90-639, §3, Oct. 24, 1968, 82 Stat. 1361; Pub. L. 91-513, title II, §701(b), Oct. 27, 1970, 84 Stat. 1281; Pub. L. 94-278, title V, §502(a)(2)(B), Apr. 22, 1976, 90 Stat. 411; Pub. L. 100-293, §7(b), Apr. 22, 1988, 102 Stat. 99; Pub. L. 100-690, title II, §2403, Nov. 18, 1988, 102 Stat. 4230; Pub. L. 101-629, §17(a), Nov. 28, 1990, 104 Stat. 4526; Pub. L. 101-647, title XIX, §1904, Nov. 29, 1990, 104 Stat. 4853; Pub. L. 102-353, §3, Aug. 26, 1992, 106 Stat. 941; Pub. L. 103-80, §3(e), Aug. 13, 1993, 107 Stat. 775; Pub. L. 103-322, title XXXIII, §330015, Sept. 13, 1994, 108 Stat. 2146; Pub. L. 104-170, title IV, §407, Aug. 3, 1996, 110 Stat. 1535; Pub. L. 106-387, §1(a) [title VII, §745(d)(2)], Oct. 28, 2000, 114 Stat. 1549, 1549A-40; Pub. L. 107-250, title II, §201(c), Oct. 26, 2002, 116 Stat. 1609; Pub. L. 108-173, title XI, §1121(b)(2), Dec. 8, 2003, 117 Stat. 2469; Pub. L. 110-85, title II, §226(b), title VIII, §801(b)(2), title IX, §§901(d)(4), 902(b), Sept. 27, 2007, 121 Stat. 854, 920, 940, 943; Pub. L. 111-31, div. A, title I, §103(c), June 22, 2009, 123 Stat. 1835; Pub. L. 111-353, title II, §206(c), Jan. 4, 2011, 124 Stat. 3943.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsec. (e)(3), is title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

Section 282(j)(5)(C)(ii) of title 42, referred to in subsec. (f)(3)(B), was in the original “section 402(j)(5)(C)(ii)”, and was translated as meaning section 402(j)(5)(C)(ii) of the Public Health Service Act to reflect the probable intent of Congress because there is no subsec. (j) of section 402 of the Federal Food, Drug, and Cosmetic Act and section 402(j)(5)(C)(ii) of the Public Health Service Act relates to notification of noncompliance with clinical trial information requirements.

AMENDMENTS

2011—Subsec. (f)(2)(A). Pub. L. 111-353 inserted “or any person who does not comply with a recall order under section 350f of this title” after “section 342(a)(2)(B) of this title”.

2009—Subsec. (f)(5)(A). Pub. L. 111-31, §103(c)(1)(A), (B), substituted “paragraph (1), (2), (3), (4), or (9)” for “paragraph (1), (2), (3), or (4)”, “shall be assessed, or a no-tobacco-sale order may be imposed,” for “shall be assessed”, and “assessed a civil penalty, or upon whom a no-tobacco-sale order is to be imposed,” for “assessed a civil penalty”.

Subsec. (f)(5)(B). Pub. L. 111-31, §103(c)(1)(C), inserted “or the period to be covered by a no-tobacco-sale order,” after “penalty,” and inserted at end “A no-tobacco-sale order permanently prohibiting an individual retail outlet from selling tobacco products shall include provisions that allow the outlet, after a specified period of time, to request that the Secretary compromise, modify, or terminate the order.”

Subsec. (f)(5)(C). Pub. L. 111-31, §103(c)(1)(A), substituted “paragraph (1), (2), (3), (4), or (9)” for “paragraph (1), (2), (3), or (4)”.

Subsec. (f)(5)(D). Pub. L. 111-31, §103(c)(1)(D), added subpar. (D).

Subsec. (f)(6). Pub. L. 111-31, §103(c)(2), inserted “or the imposition of a no-tobacco-sale order” after “penalty” in two places and substituted “issued, or on which the no-tobacco-sale order was imposed, as the case may be,” for “issued.”

Subsec. (f)(8), (9). Pub. L. 111-31, §103(c)(3), added pars. (8) and (9).

2007—Subsec. (f). Pub. L. 110-85, §226(b)(1), redesignated subsec. (g) as (f).

Subsec. (f)(1)(B)(ii). Pub. L. 110-85, §226(b)(2), substituted “360i(g)” for “360i(f)”.

Subsec. (f)(2)(C). Pub. L. 110-85, §801(b)(2)(C), substituted “paragraph (5)(A)” for “paragraph (3)(A)”.

Subsec. (f)(3). Pub. L. 110-85, §801(b)(2)(B), added par. (3). Former par. (3) redesignated (5).

Subsec. (f)(4). Pub. L. 110-85, §902(b)(1), added par. (4). Pub. L. 110-85, §801(b)(2)(A), redesignated par. (4) as (6).

Subsec. (f)(5). Pub. L. 110-85, §801(b)(2)(A), redesignated par. (3) as (5). Former par. (5) redesignated (7).

Subsec. (f)(5)(A), (C). Pub. L. 110-85, §902(b)(2), substituted “paragraph (1), (2), (3), or (4)” for “paragraph (1), (2), or (3)”.

Pub. L. 110-85, §801(b)(2)(D), substituted “paragraph (1), (2), or (3)” for “paragraph (1) or (2)”.

Subsec. (f)(6). Pub. L. 110-85, §801(b)(2)(A), (E), redesignated par. (4) as (6) and substituted “paragraph (5)(A)” for “paragraph (3)(A)”.

Subsec. (f)(7). Pub. L. 110-85, §801(b)(2)(A), (F), redesignated par. (5) as (7) and substituted “paragraph (6)” for “paragraph (4)” wherever appearing.

Subsec. (g). Pub. L. 110-85, §901(d)(4), added subsec. (g).

Pub. L. 110-85, §226(b)(1), redesignated subsec. (g) as (f).

2003—Subsec. (b)(6). Pub. L. 108-173, which directed amendment of subsec. (a)(6) by substituting “prescription drug under section 384(b)” for “covered product pursuant to section 384(a)”, was executed by making the substitution in subsec. (b)(6), to reflect the probable intent of Congress.

2002—Subsec. (g)(1)(A). Pub. L. 107-250 inserted at end “For purposes of the preceding sentence, a person accredited under paragraph (2) of section 374(g) of this title who is substantially not in compliance with the standards of accreditation under such section, or who poses a threat to public health or fails to act in a manner that is consistent with the purposes of such section, shall be considered to have violated a requirement of this chapter that relates to devices.”

2000—Subsec. (b)(6). Pub. L. 106-387 added par. (6).

1996—Subsec. (g)(2). Pub. L. 104-170, §407(1), (2), added par. (2). Former par. (2) redesignated (3).

Subsec. (g)(3). Pub. L. 104-170, §407(1), (3), redesignated par. (2) as (3) and substituted “paragraph (1) or (2)” for “paragraph (1)” in subpars. (A) and (C). Former par. (3) redesignated (4).

Subsec. (g)(4). Pub. L. 104-170, §407(1), (4), redesignated par. (3) as (4) and substituted “paragraph (3)(A)” for “paragraph (2)(A)”. Former par. (4) redesignated (5).

Subsec. (g)(5). Pub. L. 104-170, §407(1), (5), redesignated par. (4) as (5) and substituted “paragraph (4)” for “paragraph (3)” wherever appearing.

1994—Subsec. (e). Pub. L. 103-322 amended directory language of Pub. L. 101-647. See 1990 Amendment note below.

1993—Subsecs. (e) to (g). Pub. L. 103-80, which directed the amendment of this section by redesignating the second subsec. (e) and subsec. (f) as subsecs. (f) and (g), respectively, could only be executed by designating subsec. (f) as (g) because this section did not contain a second subsec. (e) subsequent to amendment of Pub. L. 101-647 by Pub. L. 103-322. See 1990 and 1994 amendment notes for subsec. (e) under this section.

1992—Subsec. (b)(1). Pub. L. 102-353, §3(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Notwithstanding subsection (a) of this section, any person who violates section 331(t) of this title because of an importation of a drug in violation of section 381(d)(1) of this title, because of a sale, purchase, or trade of a drug or drug sample or the offer to sell, purchase, or trade a drug or drug sample in violation of section 353(c) of this title, because of the sale, purchase, or trade of a coupon, the offer to sell, purchase, or trade such a coupon, or the counterfeiting of such a

coupon in violation of section 353(c)(2) of this title, or the distribution of drugs in violation of section 353(e)(2)(A) of this title shall be imprisoned for not more than 10 years or fined not more than \$250,000, or both."

Subsec. (b)(4)(A). Pub. L. 102-353, §3(b)(1), substituted "the institution of a criminal proceeding against, and conviction of," for "the arrest and conviction of".

Subsec. (b)(4)(B)(i). Pub. L. 102-353, §3(b)(1), (2), substituted "before the institution of a criminal proceeding against" for "before the arrest of" and "the institution of a criminal proceeding against, and conviction of," for "the arrest and conviction of".

Subsec. (b)(5). Pub. L. 102-353, §3(b)(3), substituted "the institution of a criminal proceeding against, and conviction of," for "the arrest and conviction of".

Subsec. (c). Pub. L. 102-353, §3(b)(4), substituted "subsection (a)(1) of this section" for "subsection (a) of this section".

Subsec. (d). Pub. L. 102-353, §3(b)(4), (5), substituted "subsection (a)(1) of this section" for "subsection (a) of this section" and struck out ", and no person shall be subject to the penalties of subsection (b) of this section for such a violation unless the violation is committed with the intent to defraud or mislead" after "advertising".

1990—Subsec. (e). Pub. L. 101-647, as amended by Pub. L. 103-322, amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows:

"(e)(1) Except as provided in paragraph (2), any person who distributes or possesses with the intent to distribute any anabolic steroid for any use in humans other than the treatment of disease pursuant to the order of a physician shall be imprisoned for not more than three years or fined under title 18, or both.

"(2) Any person who distributes or possesses with the intent to distribute to an individual under 18 years of age, any anabolic steroid for any use in humans other than the treatment of disease pursuant to the order of a physician shall be imprisoned for not more than six years or fined under title 18, or both."

Subsec. (f). Pub. L. 101-629 added subsec. (f).

1988—Subsecs. (a), (b). Pub. L. 100-293 designated existing subsecs. (a) and (b) as pars. (1) and (2) of subsec. (a), substituted "paragraph (1)" for "subsection (a)" in par. (2), and added subsec. (b).

Subsec. (e). Pub. L. 100-690 added subsec. (e).

1976—Subsec. (d). Pub. L. 94-278 added subsec. (d).

1970—Subsec. (a). Pub. L. 91-513 struck out reference to subsec. (b) and transferred to subsec. (b) provisions covering second offenses and offenses committed with intent to defraud or mislead.

Subsec. (b). Pub. L. 91-513 inserted provisions covering second offenses and offenses committed with intent to defraud or mislead formerly set out in subsec. (a) and struck out provisions covering violations involving depressant and stimulant drugs. See section 801 et seq. of this title.

1968—Subsecs. (a), (b). Pub. L. 90-639 made a general revision in the penalties prescribed for offenses involving depressant or stimulant drugs, set a fine of not to exceed \$10,000 or imprisonment of not more than 5 years for offenses involving the unlawful manufacturing of, sale, or disposal of, or possession with intent to sell, a depressant or stimulant drug or involving counterfeit depressant or stimulant drugs, stiffened the penalties for unlawful sales or other disposals by persons over 18 to persons under 21, and set new penalties for possession of a depressant or stimulant drug for purposes other than sale or other disposal.

1965—Subsec. (a). Pub. L. 89-74, §7(a), inserted proviso limiting the penalties for depressant or stimulant drug violations to two years imprisonment or \$5,000 fine or both for first offense and to two years imprisonment or \$15,000 fine or both for subsequent offenses.

Subsec. (b). Pub. L. 89-74, §7(b), inserted parenthetical exception provision.

Subsec. (c)(5). Pub. L. 89-74, §9(d), added cl. (5).

1960—Subsec. (c)(3). Pub. L. 86-618 substituted "a color additive" for "a coal-tar color", "the color addi-

tive" for "the coal-tar color" and "such color additive was" for "such color was".

1951—Subsec. (c)(4). Act Oct. 26, 1951, added cl. (4).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-31, div. A, title I, §103(q)(3), (4), June 22, 2009, 123 Stat. 1840, provided that:

"(3) GENERAL EFFECTIVE DATE.—The amendments made by paragraphs (2) [amending this section], (3) [amending this section], and (4) [no par. (4) has been enacted] of subsection (c) shall take effect upon the issuance of guidance described in paragraph (1) of this subsection [set out as a Guidance note below].

"(4) SPECIAL EFFECTIVE DATE.—The amendment made by subsection (c)(1) [amending this section] shall take effect on the date of enactment of this Act [June 22, 2009]."

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by sections 901(d)(4) and 902(b) of Pub. L. 110-85 effective 180 days after Sept. 27, 2007, see section 909 of Pub. L. 110-85, set out as a note under section 331 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330015 of Pub. L. 103-322 provided that the amendment made by that section is effective as of the date on which section 1904 of Pub. L. 101-647, which amended this section, took effect.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 17(b) of Pub. L. 101-629 provided that:

"(b) EFFECTIVE DATE OF APPLICATION TO DEVICE USER FACILITIES.—

"(1) The Secretary of Health and Human Services shall conduct a study to determine whether there has been substantial compliance with the requirements of section 519(b) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 360i(b)] by device user facilities (as defined in section 519(b)(5)(A) of such Act). The Secretary shall report the results of the study to the Congress after the expiration of 45 months after the date of the enactment of this Act [Nov. 28, 1990].

"(2)(A) If upon the expiration of 48 months after the date of the enactment of this Act [Nov. 28, 1990] the Secretary has not made the report required by paragraph (1), section 303(f) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 333(f)], as added by the amendment made by subsection (a), shall take effect with respect to device user facilities (as defined in section 519(b)(5)(A) of such Act). [Secretary of Health and Human Services had not made the report required by par. (1) on the expiration of 48 months after Nov. 28, 1990.]

"(B) If in the report under paragraph (1) the Secretary reports that there has been substantial compliance with the requirements of such section 519(b) by a type of device user facility and if the Secretary does not make a determination under subparagraph (C) with respect to such type of facility, such section 303(f) shall not take effect with respect to such type of facility.

"(C) If the Secretary determines in the report under paragraph (1) that there is not substantial compliance with the requirements of such section 519(b) by a type of device user facility or if the Secretary makes such a determination after making the report under paragraph (1), such section 303(f) shall take effect with respect to such type of facility upon the effective date of the report."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-293 effective upon expiration of 90 days after Apr. 22, 1988, see section 8(a) of Pub. L. 100-293, set out as a note under section 353 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-278 effective 180 days after Apr. 22, 1976, see section 502(c) of Pub. L. 94-278, set out as a note under section 334 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-639 applicable only with respect to violations of this chapter committed after Oct. 24, 1968, see section 6 of Pub. L. 90-639, set out as an Effective Date of 1968 Amendments; Transitional Provisions note under section 321 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-74 effective Feb. 1, 1966, see section 11 of Pub. L. 89-74, set out as a note under section 321 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-618 effective July 12, 1960, subject to the provisions of section 203 of Pub. L. 86-618, see section 202 of Pub. L. 86-618, set out as a note under section 379e of this title.

EFFECTIVE DATE OF 1951 AMENDMENT

Section 3 of act Oct. 26, 1951, provided that: "The provisions of this Act [amending this section and section 353 of this title] shall take effect six months after the date of its enactment [Oct. 26, 1951]."

SAVINGS PROVISION

Amendment by Pub. L. 91-513 not to affect or abate any prosecutions for violation of law or any civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of such amendment, and all administrative proceedings pending before the Bureau of Narcotics and Dangerous Drugs [now the Drug Enforcement Administration] on Oct. 27, 1970, to be continued and brought to final determination in accord with laws and regulations in effect prior to Oct. 27, 1970, see section 702 of Pub. L. 91-513, set out as a note under section 321 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Security Administrator to Secretary of Health, Education, and Welfare [now Health and Human Services], and of Food and Drug Administration in the Department of Agriculture to Federal Security Agency, see notes set out under section 321 of this title.

GUIDANCE

Pub. L. 111-31, div. A, title I, §103(q)(1), (2), June 22, 2009, 123 Stat. 1838, 1839, provided that:

"(1) IN GENERAL.—The Secretary of Health and Human Services shall issue guidance [see 76 F.R. 22905, effective Apr. 15, 2011]—

"(A) defining the term 'repeated violation', as used in section 303(f)(8) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(f)(8)) as amended by subsection (c), as including at least 5 violations of particular requirements over a 36-month period at a particular retail outlet that constitute a repeated violation and providing for civil penalties in accordance with paragraph (2);

"(B) providing for timely and effective notice by certified or registered mail or personal delivery to the retailer of each alleged violation at a particular retail outlet prior to conducting a followup compliance check, such notice to be sent to the location specified on the retailer's registration or to the retailer's registered agent if the retailer has provided [sic] such agent information to the Food and Drug Administration prior to the violation;

"(C) providing for a hearing pursuant to the procedures established through regulations of the Food and Drug Administration for assessing civil money penalties, including at a retailer's request a hearing

by telephone or at the nearest regional or field office of the Food and Drug Administration, and providing for an expedited procedure for the administrative appeal of an alleged violation;

"(D) providing that a person may not be charged with a violation at a particular retail outlet unless the Secretary has provided notice to the retailer of all previous violations at that outlet;

"(E) establishing that civil money penalties for multiple violations shall increase from one violation to the next violation pursuant to paragraph (2) within the time periods provided for in such paragraph;

"(F) providing that good faith reliance on the presentation of a false government-issued photographic identification that contains a date of birth does not constitute a violation of any minimum age requirement for the sale of tobacco products if the retailer has taken effective steps to prevent such violations, including—

"(i) adopting and enforcing a written policy against sales to minors;

"(ii) informing its employees of all applicable laws;

"(iii) establishing disciplinary sanctions for employee noncompliance; and

"(iv) requiring its employees to verify age by way of photographic identification or electronic scanning device; and

"(G) providing for the Secretary, in determining whether to impose a no-tobacco-sale order and in determining whether to compromise, modify, or terminate such an order, to consider whether the retailer has taken effective steps to prevent violations of the minimum age requirements for the sale of tobacco products, including the steps listed in subparagraph (F).

"(2) PENALTIES FOR VIOLATIONS.—

"(A) IN GENERAL.—The amount of the civil penalty to be applied for violations of restrictions promulgated under section 906(d) [probably means section 906(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 387f(d)], as described in paragraph (1), shall be as follows:

"(i) With respect to a retailer with an approved training program, the amount of the civil penalty shall not exceed—

"(I) in the case of the first violation, \$0.00 together with the issuance of a warning letter to the retailer;

"(II) in the case of a second violation within a 12-month period, \$250;

"(III) in the case of a third violation within a 24-month period, \$500;

"(IV) in the case of a fourth violation within a 24-month period, \$2,000;

"(V) in the case of a fifth violation within a 36-month period, \$5,000; and

"(VI) in the case of a sixth or subsequent violation within a 48-month period, \$10,000 as determined by the Secretary on a case-by-case basis.

"(ii) With respect to a retailer that does not have an approved training program, the amount of the civil penalty shall not exceed—

"(I) in the case of the first violation, \$250;

"(II) in the case of a second violation within a 12-month period, \$500;

"(III) in the case of a third violation within a 24-month period, \$1,000;

"(IV) in the case of a fourth violation within a 24-month period, \$2,000;

"(V) in the case of a fifth violation within a 36-month period, \$5,000; and

"(VI) in the case of a sixth or subsequent violation within a 48-month period, \$10,000 as determined by the Secretary on a case-by-case basis.

"(B) TRAINING PROGRAM.—For purposes of subparagraph (A), the term 'approved training program' means a training program that complies with standards developed by the Food and Drug Administration for such programs.

“(C) CONSIDERATION OF STATE PENALTIES.—The Secretary shall coordinate with the States in enforcing the provisions of this Act [probably means div. A of Pub. L. 111-31, see Short Title of 2009 Amendment note set out under section 301 of this title and Tables for classifications] and, for purposes of mitigating a civil penalty to be applied for a violation by a retailer of any restriction promulgated under section 906(d) [21 U.S.C. 387f(d)], shall consider the amount of any penalties paid by the retailer to a State for the same violation.”

CONSTRUCTION OF 2011 AMENDMENT

Nothing in amendment by Pub. L. 111-353 to be construed to alter jurisdiction and authorities established under certain other Acts or in a manner inconsistent with international agreements to which the United States is a party, see sections 2251 and 2252 of this title.

ENFORCEMENT

Pub. L. 99-660, title I, §103, Nov. 14, 1986, 100 Stat. 3751, provided that: “For the fines authorized to be imposed under section 303 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 333], see section 3623 of title 18, United States Code, for the period ending October 31, 1986 [probably should be October 31, 1987], and sections 3559 and 3571 of such title for the period beginning November 1, 1986 [probably should be November 1, 1987].”

§ 333a. Repealed. Pub. L. 101-647, title XIX, § 1905, Nov. 29, 1990, 104 Stat. 4853

Section, Pub. L. 100-690, title II, § 2401, Nov. 18, 1988, 102 Stat. 4230, related to forfeiture and illegal trafficking in steroids or human growth hormones.

§ 334. Seizure

(a) Grounds and jurisdiction

(1) Any article of food, drug, or cosmetic that is adulterated or misbranded when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce, or which may not, under the provisions of section 331(*ll*), 344, or 355 of this title, be introduced into interstate commerce, shall be liable to be proceeded against while in interstate commerce, or at any time thereafter, on libel of information and condemned in any district court of the United States or United States court of a Territory within the jurisdiction of which the article is found. No libel for condemnation shall be instituted under this chapter, for any alleged misbranding if there is pending in any court a libel for condemnation proceeding under this chapter based upon the same alleged misbranding, and not more than one such proceeding shall be instituted if no such proceeding is so pending, except that such limitations shall not apply (A) when such misbranding has been the basis of a prior judgment in favor of the United States, in a criminal, injunction, or libel for condemnation proceeding under this chapter, or (B) when the Secretary has probable cause to believe from facts found, without hearing, by him or any officer or employee of the Department that the misbranded article is dangerous to health, or that the labeling of the misbranded article is fraudulent, or would be in a material respect misleading to the injury or damage of the purchaser or consumer. In any case where the number of libel for condemnation proceedings is limited as above provided the proceeding pending or instituted shall, on application of the claimant, sea-

sonably made, be removed for trial to any district agreed upon by stipulation between the parties, or, in case of failure to so stipulate within a reasonable time, the claimant may apply to the court of the district in which the seizure has been made, and such court (after giving the United States attorney for such district reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, to which the case shall be removed for trial.

(2) The following shall be liable to be proceeded against at any time on libel of information and condemned in any district court of the United States or United States court of a Territory within the jurisdiction of which they are found: (A) Any drug that is a counterfeit drug, (B) Any container of a counterfeit drug, (C) Any punch, die, plate, stone, labeling, container, or other thing used or designed for use in making a counterfeit drug or drugs, (D) Any adulterated or misbranded device, and (E) Any adulterated or misbranded tobacco product.

(3)(A) Except as provided in subparagraph (B), no libel for condemnation may be instituted under paragraph (1) or (2) against any food which—

(i) is misbranded under section 343(a)(2) of this title because of its advertising, and

(ii) is being held for sale to the ultimate consumer in an establishment other than an establishment owned or operated by a manufacturer, packer, or distributor of the food.

(B) A libel for condemnation may be instituted under paragraph (1) or (2) against a food described in subparagraph (A) if—

(i)(I) the food's advertising which resulted in the food being misbranded under section 343(a)(2) of this title was disseminated in the establishment in which the food is being held for sale to the ultimate consumer,

(II) such advertising was disseminated by, or under the direction of, the owner or operator of such establishment, or

(III) all or part of the cost of such advertising was paid by such owner or operator; and

(ii) the owner or operator of such establishment used such advertising in the establishment to promote the sale of the food.

(b) Procedure; multiplicity of pending proceedings

The article, equipment, or other thing proceeded against shall be liable to seizure by process pursuant to the libel, and the procedure in cases under this section shall conform, as nearly as may be, to the procedure in admiralty; except that on demand of either party any issue of fact joined in any such case shall be tried by jury. When libel for condemnation proceedings under this section, involving the same claimant and the same issues of adulteration or misbranding, are pending in two or more jurisdictions, such pending proceedings, upon application of the claimant seasonably made to the court of one such jurisdiction, shall be consolidated for trial by order of such court, and tried in (1) any district selected by the claimant where one of such proceedings is pending; or (2) a district agreed

upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the claimant may apply to the court of one such jurisdiction and such court (after giving the United States attorney for such district reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, in which all such pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the cases covered thereby.

(c) Availability of samples of seized goods prior to trial

The court at any time after seizure up to a reasonable time before trial shall by order allow any party to a condemnation proceeding, his attorney or agent, to obtain a representative sample of the article seized and a true copy of the analysis, if any, on which the proceeding is based and the identifying marks or numbers, if any, of the packages from which the samples analyzed were obtained.

(d) Disposition of goods after decree of condemnation; claims for remission or mitigation of forfeitures

(1) Any food, drug, device, tobacco product, or cosmetic condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this section, direct and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States; but such article shall not be sold under such decree contrary to the provisions of this chapter or the laws of the jurisdiction in which sold. After entry of the decree and upon the payment of the costs of such proceedings and the execution of a good and sufficient bond conditioned that such article shall not be sold or disposed of contrary to the provisions of this chapter or the laws of any State or Territory in which sold, the court may by order direct that such article be delivered to the owner thereof to be destroyed or brought into compliance with the provisions of this chapter, under the supervision of an officer or employee duly designated by the Secretary, and the expenses of such supervision shall be paid by the person obtaining release of the article under bond. If the article was imported into the United States and the person seeking its release establishes (A) that the adulteration, misbranding, or violation did not occur after the article was imported, and (B) that he had no cause for believing that it was adulterated, misbranded, or in violation before it was released from customs custody, the court may permit the article to be delivered to the owner for exportation in lieu of destruction upon a showing by the owner that all of the conditions of section 381(e) of this title can and will be met. The provisions of this sentence shall not apply where condemnation is based upon violation of section 342(a)(1), (2), or (6), section 351(a)(3), section 352(j), or section

361(a) or (d) of this title. Where such exportation is made to the original foreign supplier, then subparagraphs (A) and (B) of section 381(e)(1) of this title and the preceding sentence shall not be applicable; and in all cases of exportation the bond shall be conditioned that the article shall not be sold or disposed of until the applicable conditions of section 381(e) of this title have been met. Any person seeking to export an imported article pursuant to any of the provisions of this subsection shall establish that the article was intended for export at the time the article entered commerce. Any article condemned by reason of its being an article which may not, under section 344 or 355 of this title, be introduced into interstate commerce, shall be disposed of by destruction.

(2) The provisions of paragraph (1) of this subsection shall, to the extent deemed appropriate by the court, apply to any equipment or other thing which is not otherwise within the scope of such paragraph and which is referred to in paragraph (2) of subsection (a) of this section.

(3) Whenever in any proceeding under this section, involving paragraph (2) of subsection (a) of this section, the condemnation of any equipment or thing (other than a drug) is decreed, the court shall allow the claim of any claimant, to the extent of such claimant's interest, for remission or mitigation of such forfeiture if such claimant proves to the satisfaction of the court (i) that he has not committed or caused to be committed any prohibited act referred to in such paragraph (2) and has no interest in any drug referred to therein, (ii) that he has an interest in such equipment or other thing as owner or lienor or otherwise, acquired by him in good faith, and (iii) that he at no time had any knowledge or reason to believe that such equipment or other thing was being or would be used in, or to facilitate, the violation of laws of the United States relating to counterfeit drugs.

(e) Costs

When a decree of condemnation is entered against the article, court costs and fees, and storage and other proper expenses, shall be awarded against the person, if any, intervening as claimant of the article.

(f) Removal of case for trial

In the case of removal for trial of any case as provided by subsection (a) or (b) of this section—

(1) The clerk of the court from which removal is made shall promptly transmit to the court in which the case is to be tried all records in the case necessary in order that such court may exercise jurisdiction.

(2) The court to which such case was removed shall have the powers and be subject to the duties, for purposes of such case, which the court from which removal was made would have had, or to which such court would have been subject, if such case had not been removed.

(g) Administrative restraint; detention orders

(1) If during an inspection conducted under section 374 of this title of a facility or a vehicle, a device or tobacco product which the officer or employee making the inspection has reason to believe is adulterated or misbranded is found in

such facility or vehicle, such officer or employee may order the device or tobacco product detained (in accordance with regulations prescribed by the Secretary) for a reasonable period which may not exceed twenty days unless the Secretary determines that a period of detention greater than twenty days is required to institute an action under subsection (a) of this section or section 332 of this title, in which case he may authorize a detention period of not to exceed thirty days. Regulations of the Secretary prescribed under this paragraph shall require that before a device or tobacco product may be ordered detained under this paragraph the Secretary or an officer or employee designated by the Secretary approve such order. A detention order under this paragraph may require the labeling or marking of a device or tobacco product during the period of its detention for the purpose of identifying the device or tobacco product as detained. Any person who would be entitled to claim a device or tobacco product if it were seized under subsection (a) of this section may appeal to the Secretary a detention of such device or tobacco product under this paragraph. Within five days of the date an appeal of a detention is filed with the Secretary, the Secretary shall after affording opportunity for an informal hearing by order confirm the detention or revoke it.

(2)(A) Except as authorized by subparagraph (B), a device or tobacco product subject to a detention order issued under paragraph (1) shall not be moved by any person from the place at which it is ordered detained until—

- (i) released by the Secretary, or
- (ii) the expiration of the detention period applicable to such order,

whichever occurs first.

(B) A device subject to a detention order under paragraph (1) may be moved—

- (i) in accordance with regulations prescribed by the Secretary, and
- (ii) if not in final form for shipment, at the discretion of the manufacturer of the device for the purpose of completing the work required to put it in such form.

(h) Administrative detention of foods

(1) Detention authority

(A) In general

An officer or qualified employee of the Food and Drug Administration may order the detention, in accordance with this subsection, of any article of food that is found during an inspection, examination, or investigation under this chapter conducted by such officer or qualified employee, if the officer or qualified employee has reason to believe that such article is adulterated or misbranded.

(B) Secretary's approval

An article of food may be ordered detained under subparagraph (A) only if the Secretary or an official designated by the Secretary approves the order. An official may not be so designated unless the official is the director of the district under this chapter in which the article involved is located, or is an official senior to such director.

(2) Period of detention

An article of food may be detained under paragraph (1) for a reasonable period, not to exceed 20 days, unless a greater period, not to exceed 30 days, is necessary, to enable the Secretary to institute an action under subsection (a) of this section or section 332 of this title. The Secretary shall by regulation provide for procedures for instituting such action on an expedited basis with respect to perishable foods.

(3) Security of detained article

An order under paragraph (1) with respect to an article of food may require that such article be labeled or marked as detained, and shall require that the article be removed to a secure facility, as appropriate. An article subject to such an order shall not be transferred by any person from the place at which the article is ordered detained, or from the place to which the article is so removed, as the case may be, until released by the Secretary or until the expiration of the detention period applicable under such order, whichever occurs first. This subsection may not be construed as authorizing the delivery of the article pursuant to the execution of a bond while the article is subject to the order, and section 381(b) of this title does not authorize the delivery of the article pursuant to the execution of a bond while the article is subject to the order.

(4) Appeal of detention order

(A) In general

With respect to an article of food ordered detained under paragraph (1), any person who would be entitled to be a claimant for such article if the article were seized under subsection (a) of this section may appeal the order to the Secretary. Within five days after such an appeal is filed, the Secretary, after providing opportunity for an informal hearing, shall confirm or terminate the order involved, and such confirmation by the Secretary shall be considered a final agency action for purposes of section 702 of title 5. If during such five-day period the Secretary fails to provide such an opportunity, or to confirm or terminate such order, the order is deemed to be terminated.

(B) Effect of instituting court action

The process under subparagraph (A) for the appeal of an order under paragraph (1) terminates if the Secretary institutes an action under subsection (a) of this section or section 332 of this title regarding the article of food involved.

(June 25, 1938, ch. 675, § 304, 52 Stat. 1044; June 24, 1948, ch. 613, § 2, 62 Stat. 582; Aug. 7, 1953, ch. 350, § 3, 67 Stat. 477; Pub. L. 85-250, Aug. 31, 1957, 71 Stat. 567; Pub. L. 89-74, § 6, July 15, 1965, 79 Stat. 232; Pub. L. 90-639, § 4(b), Oct. 24, 1968, 82 Stat. 1362; Pub. L. 91-513, title II, § 701(c), (d), Oct. 27, 1970, 84 Stat. 1281, 1282; Pub. L. 94-278, title V, § 502(a)(2)(C), Apr. 22, 1976, 90 Stat. 411; Pub. L. 94-295, §§ 3(c), 7(a), May 28, 1976, 90 Stat. 576, 582; Pub. L. 102-300, § 6(c), June 16, 1992, 106 Stat. 240; Pub. L. 103-80, § 3(f), Aug. 13, 1993, 107 Stat. 775; Pub. L. 105-115, title IV, § 418, Nov. 21, 1997, 111

Stat. 2379; Pub. L. 107-188, title III, §303(a), June 12, 2002, 116 Stat. 663; Pub. L. 110-85, title IX, §912(b)(1), Sept. 27, 2007, 121 Stat. 952; Pub. L. 111-31, div. A, title I, §103(d), June 22, 2009, 123 Stat. 1836; Pub. L. 111-353, title II, §207(a), Jan. 4, 2011, 124 Stat. 3944.)

AMENDMENTS

2011—Subsec. (h)(1)(A). Pub. L. 111-353 substituted “reason to believe” for “credible evidence or information indicating” and “is adulterated or misbranded” for “presents a threat of serious adverse health consequences or death to humans or animals”.

2009—Subsec. (a)(2)(E). Pub. L. 111-31, §103(d)(1), added cl. (E).

Subsec. (d)(1). Pub. L. 111-31, §103(d)(2), inserted “tobacco product,” after “device,” in first sentence.

Subsec. (g)(1). Pub. L. 111-31, §103(d)(3), inserted “or tobacco product” after “device” wherever appearing.

Subsec. (g)(2)(A). Pub. L. 111-31, §103(d)(4), inserted “or tobacco product” after “device” in introductory provisions.

2007—Subsec. (a)(1). Pub. L. 110-85 substituted “section 331(l), 344, or 355” for “section 344 or 355”.

2002—Subsec. (h). Pub. L. 107-188 added subsec. (h).

1997—Subsec. (d)(1). Pub. L. 105-115 substituted “subparagraphs (A) and (B) of section 381(e)(1) of this title” for “paragraphs (1) and (2) of section 381(e) of this title” and inserted “Any person seeking to export an imported article pursuant to any of the provisions of this subsection shall establish that the article was intended for export at the time the article entered commerce.” before “Any article condemned by reason”.

1993—Subsec. (a)(1). Pub. L. 103-80, §3(f)(1), substituted “found. No libel” for “found: *Provided, however, That no libel*”.

Subsec. (d)(1). Pub. L. 103-80, §3(f)(2), substituted “sold. After entry” for “sold: *Provided, That after entry*”, “met. The provisions of this sentence” for “met: *Provided, however, That the provisions of this sentence*”, “title. Where such exportation” for “title: *And provided further, That where such exportation*”, and “the preceding sentence shall not be applicable” for “the foregoing proviso shall not be applicable”.

1992—Subsec. (d)(1). Pub. L. 102-300 substituted “381(e)” for “381(d)” in three places and “paragraphs” for “clauses” before “(1) and (2) of section 381(e)”.

1976—Subsec. (a)(1). Pub. L. 94-295, §3(c)(1), struck out “device,” after “Any article of food, drug,”.

Subsec. (a)(2). Pub. L. 94-295, §3(c)(2), (3), added cl. (D) covering adulterated or misbranded devices.

Subsec. (a)(3). Pub. L. 94-278 added par. (3).

Subsec. (g). Pub. L. 94-295, §7(a), added subsec. (g).

1970—Subsec. (a)(2). Pub. L. 91-513, §701(c), struck out cls. (A) and (D) which dealt with depressant or stimulant drugs, struck out reference to depressant or stimulant drugs in cl. (C), and redesignated cls. (B), (C), and (E) as cls. (A), (B), and (C), respectively.

Subsec. (d)(3)(iii). Pub. L. 91-513, §701(d), struck out reference to depressant or stimulant drugs.

1968—Subsec. (a). Pub. L. 90-639 inserted references to the United States courts of Territories.

1965—Subsec. (a). Pub. L. 89-74, §6(a), designated existing provisions as par. (1), redesignated cls. (1) and (2) of proviso as (A) and (B), and added par. (2).

Subsec. (b). Pub. L. 89-74, §6(b)(1), inserted “equipment, or other thing proceeded against” after “article” in first sentence.

Subsec. (d). Pub. L. 89-74, §6(b)(2), designated existing provisions as par. (1), redesignated cls. (1) and (2) of the second sentence thereof as (A) and (B), and added pars. (2) and (3).

1957—Subsec. (d). Pub. L. 85-250 permitted, under certain circumstances, reexportation of articles condemned at places other than original port of entry.

1953—Subsec. (c). Act Aug. 7, 1953, provided that a true copy of the analysis in any case shall be furnished the owner.

1948—Subsec. (a). Act June 24, 1948, inserted “or while held for sale (whether or not the first sale) after ship-

ment in interstate commerce” to make this subsection coextensive with section 331(k) of this title.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111-353, title II, §207(c), Jan. 4, 2011, 124 Stat. 3944, provided that: “The amendment made by this section [amending this section] shall take effect 180 days after the date of enactment of this Act [Jan. 4, 2011].”

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-115 effective 90 days after Nov. 21, 1997, except as otherwise provided, see section 501 of Pub. L. 105-115, set out as a note under section 321 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 502(c) of Pub. L. 94-278 provided that: “The amendments made by subsection (a) [amending this section and sections 321, 333, and 343 of this title] shall take effect 180 days after the date of the enactment of this Act [Apr. 22, 1976].”

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-639 applicable only with respect to violations of this chapter committed after Oct. 24, 1968, see section 6 of Pub. L. 90-639, set out as an Effective Date of 1968 Amendments; Transitional Provisions note under section 321 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89-74 effective Feb. 1, 1966, see section 11 of Pub. L. 89-74, set out as a note under section 321 of this title.

REGULATIONS

Pub. L. 111-353, title II, §207(b), Jan. 4, 2011, 124 Stat. 3944, provided that: “Not later than 120 days after the date of enactment of this Act [Jan. 4, 2011], the Secretary shall issue an interim final rule amending subpart K of part 1 of title 21, Code of Federal Regulations, to implement the amendment made by this section [amending this section].”

SAVINGS PROVISION

Amendment by Pub. L. 91-513 not to affect or abate any prosecutions for any violation of law or any civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of such amendment, and all administrative proceedings pending before the Bureau of Narcotics and Dangerous Drugs [now the Drug Enforcement Administration] on Oct. 27, 1970, to be continued and brought to final determination in accord with laws and regulations in effect prior to Oct. 27, 1970, see section 702 of Pub. L. 91-513, set out as a note under section 321 of this title.

CONSTRUCTION OF 2011 AMENDMENT

Nothing in amendment by Pub. L. 111-353 to be construed to alter jurisdiction and authorities established under certain other Acts or in a manner inconsistent with international agreements to which the United States is a party, see sections 2251 and 2252 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Security Administrator to Secretary of Health, Education, and Welfare [now Health and Human Services], and of Food and Drug Administration in the Department of Agriculture to Federal Security Agency, see notes set out under section 321 of this title.

§ 335. Hearing before report of criminal violation

Before any violation of this chapter is reported by the Secretary to any United States at-

torney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding.

(June 25, 1938, ch. 675, § 305, 52 Stat. 1045.)

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Security Administrator to Secretary of Health, Education, and Welfare [now Health and Human Services], and of Food and Drug Administration in the Department of Agriculture to Federal Security Agency, see notes set out under section 321 of this title.

§ 335a. Debarment, temporary denial of approval, and suspension

(a) Mandatory debarment; certain drug applications

(1) Corporations, partnerships, and associations

If the Secretary finds that a person other than an individual has been convicted, after May 13, 1992, of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of any abbreviated drug application, the Secretary shall debar such person from submitting, or assisting in the submission of, any such application.

(2) Individuals

If the Secretary finds that an individual has been convicted of a felony under Federal law for conduct—

(A) relating to the development or approval, including the process for development or approval, of any drug product, or

(B) otherwise relating to the regulation of any drug product under this chapter,

the Secretary shall debar such individual from providing services in any capacity to a person that has an approved or pending drug product application.

(b) Permissive debarment; certain drug applications; food imports

(1) In general

The Secretary, on the Secretary's own initiative or in response to a petition, may, in accordance with paragraph (2), debar—

(A) a person other than an individual from submitting or assisting in the submission of any abbreviated drug application,

(B) an individual from providing services in any capacity to a person that has an approved or pending drug product application, or

(C) a person from importing an article of food or offering such an article for import into the United States.

(2) Persons subject to permissive debarment; certain drug applications

The following persons are subject to debarment under subparagraph (A) or (B) of paragraph (1):

(A) Corporations, partnerships, and associations

Any person other than an individual that the Secretary finds has been convicted—

(i) for conduct that—

(I) relates to the development or approval, including the process for the development or approval, of any abbreviated drug application; and

(II) is a felony under Federal law (if the person was convicted before May 13, 1992), a misdemeanor under Federal law, or a felony under State law, or

(ii) of a conspiracy to commit, or aiding or abetting, a criminal offense described in clause (i) or a felony described in subsection (a)(1) of this section,

if the Secretary finds that the type of conduct which served as the basis for such conviction undermines the process for the regulation of drugs.

(B) Individuals

(i) Any individual whom the Secretary finds has been convicted of—

(I) a misdemeanor under Federal law or a felony under State law for conduct relating to the development or approval, including the process for development or approval, of any drug product or otherwise relating to the regulation of drug products under this chapter, or

(II) a conspiracy to commit, or aiding or abetting, such criminal offense or a felony described in subsection (a)(2) of this section,

if the Secretary finds that the type of conduct which served as the basis for such conviction undermines the process for the regulation of drugs.

(ii) Any individual whom the Secretary finds has been convicted of—

(I) a felony which is not described in subsection (a)(2) of this section or clause (i) of this subparagraph and which involves bribery, payment of illegal gratuities, fraud, perjury, false statement, racketeering, blackmail, extortion, falsification or destruction of records, or interference with, obstruction of an investigation into, or prosecution of, any criminal offense, or

(II) a conspiracy to commit, or aiding or abetting, such felony,

if the Secretary finds, on the basis of the conviction of such individual and other information, that such individual has demonstrated a pattern of conduct sufficient to find that there is reason to believe that such individual may violate requirements under this chapter relating to drug products.

(iii) Any individual whom the Secretary finds materially participated in acts that were the basis for a conviction for an offense described in subsection (a) of this section or in clause (i) or (ii) for which a conviction was obtained, if the Secretary finds, on the basis of such participation and other information, that such individual has demonstrated a pattern of conduct sufficient to find that there is reason to believe that such individual may violate requirements under this chapter relating to drug products.

(iv) Any high managerial agent whom the Secretary finds—

(I) worked for, or worked as a consultant for, the same person as another individual during the period in which such other individual took actions for which a felony conviction was obtained and which resulted in the debarment under subsection (a)(2) of this section, or clause (i), of such other individual,

(II) had actual knowledge of the actions described in subclause (I) of such other individual, or took action to avoid such actual knowledge, or failed to take action for the purpose of avoiding such actual knowledge,

(III) knew that the actions described in subclause (I) were violative of law, and

(IV) did not report such actions, or did not cause such actions to be reported, to an officer, employee, or agent of the Department or to an appropriate law enforcement officer, or failed to take other appropriate action that would have ensured that the process for the regulation of drugs was not undermined, within a reasonable time after such agent first knew of such actions,

if the Secretary finds that the type of conduct which served as the basis for such other individual's conviction undermines the process for the regulation of drugs.

(3) Persons subject to permissive debarment; food importation

A person is subject to debarment under paragraph (1)(C) if—

(A) the person has been convicted of a felony for conduct relating to the importation into the United States of any food; or

(B) the person has engaged in a pattern of importing or offering for import adulterated food that presents a threat of serious adverse health consequences or death to humans or animals.

(4) Stay of certain orders

An order of the Secretary under clause (iii) or (iv) of paragraph (2)(B) shall not take effect until 30 days after the order has been issued.

(c) Debarment period and considerations

(1) Effect of debarment

The Secretary—

(A) shall not accept or review (other than in connection with an audit under this section) any abbreviated drug application submitted by or with the assistance of a person debarred under subsection (a)(1) or (b)(2)(A) of this section during the period such person is debarred,

(B) shall, during the period of a debarment under subsection (a)(2) or (b)(2)(B) of this section, debar an individual from providing services in any capacity to a person that has an approved or pending drug product application and shall not accept or review (other than in connection with an audit under this section) an abbreviated drug application from such individual, and

(C) shall, if the Secretary makes the finding described in paragraph (6) or (7) of section 335b(a) of this title, assess a civil pen-

alty in accordance with section 335b of this title.

(2) Debarment periods

(A) In general

The Secretary shall debar a person under subsection (a) or (b) of this section for the following periods:

(i) The period of debarment of a person (other than an individual) under subsection (a)(1) of this section shall not be less than 1 year or more than 10 years, but if an act leading to a subsequent debarment under subsection (a) of this section occurs within 10 years after such person has been debarred under subsection (a)(1) of this section, the period of debarment shall be permanent.

(ii) The debarment of an individual under subsection (a)(2) of this section shall be permanent.

(iii) The period of debarment of any person under paragraph (2) or (3) of subsection (b) of this section shall not be more than 5 years.

The Secretary may determine whether debarment periods shall run concurrently or consecutively in the case of a person debarred for multiple offenses.

(B) Notification

Upon a conviction for an offense described in subsection (a) or (b) of this section or upon execution of an agreement with the United States to plead guilty to such an offense, the person involved may notify the Secretary that the person acquiesces to debarment and such person's debarment shall commence upon such notification.

(3) Considerations

In determining the appropriateness and the period of a debarment of a person under subsection (b) of this section and any period of debarment beyond the minimum specified in subparagraph (A)(i) of paragraph (2), the Secretary shall consider where applicable—

(A) the nature and seriousness of any offense involved,

(B) the nature and extent of management participation in any offense involved, whether corporate policies and practices encouraged the offense, including whether inadequate institutional controls contributed to the offense,

(C) the nature and extent of voluntary steps to mitigate the impact on the public of any offense involved, including the recall or the discontinuation of the distribution of suspect drugs, full cooperation with any investigations (including the extent of disclosure to appropriate authorities of all wrongdoing), the relinquishing of profits on drug approvals fraudulently obtained, and any other actions taken to substantially limit potential or actual adverse effects on the public health,

(D) whether the extent to which changes in ownership, management, or operations have corrected the causes of any offense involved and provide reasonable assurances that the offense will not occur in the future,

(E) whether the person to be debarred is able to present adequate evidence that current production of drugs subject to abbreviated drug applications and all pending abbreviated drug applications are free of fraud or material false statements, and

(F) prior convictions under this chapter or under other Acts involving matters within the jurisdiction of the Food and Drug Administration.

(d) Termination of debarment

(1) Application

Any person that is debarred under subsection (a) of this section (other than a person permanently debarred) or any person that is debarred under subsection (b) of this section may apply to the Secretary for termination of the debarment under this subsection. Any information submitted to the Secretary under this paragraph does not constitute an amendment or supplement to pending or approved abbreviated drug applications.

(2) Deadline

The Secretary shall grant or deny any application respecting a debarment which is submitted under paragraph (1) within 180 days of the date the application is submitted.

(3) Action by the Secretary

(A) Corporations

(i) Conviction reversal

If the conviction which served as the basis for the debarment of a person under subsection (a)(1) of this section or paragraph (2)(A) or (3) of subsection (b) of this section is reversed, the Secretary shall withdraw the order of debarment.

(ii) Application

Upon application submitted under paragraph (1), the Secretary shall terminate the debarment of a person if the Secretary finds that—

(I) changes in ownership, management, or operations have fully corrected the causes of the offense involved and provide reasonable assurances that the offense will not occur in the future, and

(II) in applicable cases, sufficient audits, conducted by the Food and Drug Administration or by independent experts acceptable to the Food and Drug Administration, demonstrate that pending applications and the development of drugs being tested before the submission of an application are free of fraud or material false statements.

In the case of persons debarred under subsection (a)(1) of this section, such termination shall take effect no earlier than the expiration of one year from the date of the debarment.

(B) Individuals

(i) Conviction reversal

If the conviction which served as the basis for the debarment of an individual under subsection (a)(2) of this section or clause (i), (ii), (iii), or (iv) of subsection

(b)(2)(B) or subsection (b)(3) of this section is reversed, the Secretary shall withdraw the order of debarment.

(ii) Application

Upon application submitted under paragraph (1), the Secretary shall terminate the debarment of an individual who has been debarred under subsection (b)(2)(B) or subsection (b)(3) of this section if such termination serves the interests of justice and adequately protects the integrity of the drug approval process or the food importation process, as the case may be.

(4) Special termination

(A) Application

Any person that is debarred under subsection (a)(1) of this section (other than a person permanently debarred under subsection (c)(2)(A)(i) of this section) or any individual who is debarred under subsection (a)(2) of this section may apply to the Secretary for special termination of debarment under this subsection. Any information submitted to the Secretary under this subparagraph does not constitute an amendment or supplement to pending or approved abbreviated drug applications.

(B) Corporations

Upon an application submitted under subparagraph (A), the Secretary may take the action described in subparagraph (D) if the Secretary, after an informal hearing, finds that—

(i) the person making the application under subparagraph (A) has demonstrated that the felony conviction which was the basis for such person's debarment involved the commission of an offense which was not authorized, requested, commanded, performed, or recklessly tolerated by the board of directors or by a high managerial agent acting on behalf of the person within the scope of the board's or agent's office or employment,

(ii) all individuals who were involved in the commission of the offense or who knew or should have known of the offense have been removed from employment involving the development or approval of any drug subject to sections¹ 355 of this title,

(iii) the person fully cooperated with all investigations and promptly disclosed all wrongdoing to the appropriate authorities, and

(iv) the person acted to mitigate any impact on the public of any offense involved, including the recall, or the discontinuation of the distribution, of any drug with respect to which the Secretary requested a recall or discontinuation of distribution due to concerns about the safety or efficacy of the drug.

(C) Individuals

Upon an application submitted under subparagraph (A), the Secretary may take the action described in subparagraph (D) if the

¹ So in original. Probably should be "section".

Secretary, after an informal hearing, finds that such individual has provided substantial assistance in the investigations or prosecutions of offenses which are described in subsection (a) or (b) of this section or which relate to any matter under the jurisdiction of the Food and Drug Administration.

(D) Secretarial action

The action referred to in subparagraphs (B) and (C) is—

(i) in the case of a person other than an individual—

(I) terminating the debarment immediately, or

(II) limiting the period of debarment to less than one year, and

(ii) in the case of an individual, limiting the period of debarment to less than permanent but to no less than 1 year,

whichever best serves the interest of justice and protects the integrity of the drug approval process.

(e) Publication and list of debarred persons

The Secretary shall publish in the Federal Register the name of any person debarred under subsection (a) or (b) of this section, the effective date of the debarment, and the period of the debarment. The Secretary shall also maintain and make available to the public a list, updated no less often than quarterly, of such persons, of the effective dates and minimum periods of such debarments, and of the termination of debarments.

(f) Temporary denial of approval

(1) In general

The Secretary, on the Secretary's own initiative or in response to a petition, may, in accordance with paragraph (3), refuse by order, for the period prescribed by paragraph (2), to approve any abbreviated drug application submitted by any person—

(A) if such person is under an active Federal criminal investigation in connection with an action described in subparagraph (B),

(B) if the Secretary finds that such person—

(i) has bribed or attempted to bribe, has paid or attempted to pay an illegal gratuity, or has induced or attempted to induce another person to bribe or pay an illegal gratuity to any officer, employee, or agent of the Department of Health and Human Services or to any other Federal, State, or local official in connection with any abbreviated drug application, or has conspired to commit, or aided or abetted, such actions, or

(ii) has knowingly made or caused to be made a pattern or practice of false statements or misrepresentations with respect to material facts relating to any abbreviated drug application, or the production of any drug subject to an abbreviated drug application, to any officer, employee, or agent of the Department of Health and Human Services, or has conspired to commit, or aided or abetted, such actions, and

(C) if a significant question has been raised regarding—

(i) the integrity of the approval process with respect to such abbreviated drug application, or

(ii) the reliability of data in or concerning such person's abbreviated drug application.

Such an order may be modified or terminated at any time.

(2) Applicable period

(A) In general

Except as provided in subparagraph (B), a denial of approval of an application of a person under paragraph (1) shall be in effect for a period determined by the Secretary but not to exceed 18 months beginning on the date the Secretary finds that the conditions described in subparagraphs (A), (B), and (C) of paragraph (1) exist. The Secretary shall terminate such denial—

(i) if the investigation with respect to which the finding was made does not result in a criminal charge against such person, if criminal charges have been brought and the charges have been dismissed, or if a judgment of acquittal has been entered, or

(ii) if the Secretary determines that such finding was in error.

(B) Extension

If, at the end of the period described in subparagraph (A), the Secretary determines that a person has been criminally charged for an action described in subparagraph (B) of paragraph (1), the Secretary may extend the period of denial of approval of an application for a period not to exceed 18 months. The Secretary shall terminate such extension if the charges have been dismissed, if a judgment of acquittal has been entered, or if the Secretary determines that the finding described in subparagraph (A) was in error.

(3) Informal hearing

Within 10 days of the date an order is issued under paragraph (1), the Secretary shall provide such person with an opportunity for an informal hearing, to be held within such 10 days, on the decision of the Secretary to refuse approval of an abbreviated drug application. Within 60 days of the date on which such hearing is held, the Secretary shall notify the person given such hearing whether the Secretary's refusal of approval will be continued, terminated, or otherwise modified. Such notification shall be final agency action.

(g) Suspension authority

(1) In general

If—

(A) the Secretary finds—

(i) that a person has engaged in conduct described in subparagraph (B) of subsection (f)(1) of this section in connection with 2 or more drugs under abbreviated drug applications, or

(ii) that a person has engaged in flagrant and repeated, material violations of good manufacturing practice or good laboratory

practice in connection with the development, manufacturing, or distribution of one or more drugs approved under an abbreviated drug application during a 2-year period, and—

(I) such violations may undermine the safety and efficacy of such drugs, and

(II) the causes of such violations have not been corrected within a reasonable period of time following notice of such violations by the Secretary, and

(B) such person is under an active investigation by a Federal authority in connection with a civil or criminal action involving conduct described in subparagraph (A),

the Secretary shall issue an order suspending the distribution of all drugs the development or approval of which was related to such conduct described in subparagraph (A) or suspending the distribution of all drugs approved under abbreviated drug applications of such person if the Secretary finds that such conduct may have affected the development or approval of a significant number of drugs which the Secretary is unable to identify. The Secretary shall exclude a drug from such order if the Secretary determines that such conduct was not likely to have influenced the safety or efficacy of such drug.

(2) Public health waiver

The Secretary shall, on the Secretary's own initiative or in response to a petition, waive the suspension under paragraph (1) (involving an action described in paragraph (1)(A)(i)) with respect to any drug if the Secretary finds that such waiver is necessary to protect the public health because sufficient quantities of the drug would not otherwise be available. The Secretary shall act on any petition seeking action under this paragraph within 180 days of the date the petition is submitted to the Secretary.

(h) Termination of suspension

The Secretary shall withdraw an order of suspension of the distribution of a drug under subsection (g) of this section if the person with respect to whom the order was issued demonstrates in a petition to the Secretary—

(1)(A) on the basis of an audit by the Food and Drug Administration or by experts acceptable to the Food and Drug Administration, or on the basis of other information, that the development, approval, manufacturing, and distribution of such drug is in substantial compliance with the applicable requirements of this chapter, and

(B) changes in ownership, management, or operations—

(i) fully remedy the patterns or practices with respect to which the order was issued, and

(ii) provide reasonable assurances that such actions will not occur in the future, or

(2) the initial determination was in error.

The Secretary shall act on a submission of a petition under this subsection within 180 days of the date of its submission and the Secretary may consider the petition concurrently with the

suspension proceeding. Any information submitted to the Secretary under this subsection does not constitute an amendment or supplement to a pending or approved abbreviated drug application.

(i) Procedure

The Secretary may not take any action under subsection (a), (b), (c), (d)(3), (g), or (h) of this section with respect to any person unless the Secretary has issued an order for such action made on the record after opportunity for an agency hearing on disputed issues of material fact. In the course of any investigation or hearing under this subsection, the Secretary may administer oaths and affirmations, examine witnesses, receive evidence, and issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence that relates to the matter under investigation.

(j) Judicial review

(1) In general

Except as provided in paragraph (2), any person that is the subject of an adverse decision under subsection (a), (b), (c), (d), (f), (g), or (h) of this section may obtain a review of such decision by the United States Court of Appeals for the District of Columbia or for the circuit in which the person resides, by filing in such court (within 60 days following the date the person is notified of the Secretary's decision) a petition requesting that the decision be modified or set aside.

(2) Exception

Any person that is the subject of an adverse decision under clause (iii) or (iv) of subsection (b)(2)(B) of this section may obtain a review of such decision by the United States District Court for the District of Columbia or a district court of the United States for the district in which the person resides, by filing in such court (within 30 days following the date the person is notified of the Secretary's decision) a complaint requesting that the decision be modified or set aside. In such an action, the court shall determine the matter de novo.

(k) Certification

Any application for approval of a drug product shall include—

(1) a certification that the applicant did not and will not use in any capacity the services of any person debarred under subsection (a) or (b) of this section, in connection with such application, and

(2) if such application is an abbreviated drug application, a list of all convictions, described in subsections (a) and (b) of this section which occurred within the previous 5 years, of the applicant and affiliated persons responsible for the development or submission of such application.

(l) Applicability

(1) Conviction

For purposes of this section, a person is considered to have been convicted of a criminal offense—

(A) when a judgment of conviction has been entered against the person by a Federal

or State court, regardless of whether there is an appeal pending.

(B) when a plea of guilty or nolo contendere by the person has been accepted by a Federal or State court, or

(C) when the person has entered into participation in a first offender, deferred adjudication, or other similar arrangement or program where judgment of conviction has been withheld.

(2) Effective dates

Subsection (a) of this section, subparagraph (A) of subsection (b)(2) of this section, clauses (i) and (ii) of subsection (b)(2)(B) of this section, and subsection (b)(3)(A) of this section shall not apply to a conviction which occurred more than 5 years before the initiation of an agency action proposed to be taken under subsection (a) or (b) of this section. Clauses (iii) and (iv) of subsection (b)(2)(B) of this section, subsection (b)(3)(B) of this section, and subsections (f) and (g) of this section shall not apply to an act or action which occurred more than 5 years before the initiation of an agency action proposed to be taken under subsection (b), (f), or (g) of this section. Clause (iv) of subsection (b)(2)(B) of this section shall not apply to an action which occurred before June 1, 1992. Subsection (k) of this section shall not apply to applications submitted to the Secretary before June 1, 1992.

(m) Devices; mandatory debarment regarding third-party inspections and reviews

(1) In general

If the Secretary finds that a person has been convicted of a felony under section 331(gg) of this title, the Secretary shall debar such person from being accredited under section 360m(b) or 374(g)(2) of this title and from carrying out activities under an agreement described in section 383(b) of this title.

(2) Debarment period

The Secretary shall debar a person under paragraph (1) for the following periods:

(A) The period of debarment of a person (other than an individual) shall not be less than 1 year or more than 10 years, but if an act leading to a subsequent debarment under such paragraph occurs within 10 years after such person has been debarred under such paragraph, the period of debarment shall be permanent.

(B) The debarment of an individual shall be permanent.

(3) Termination of debarment; judicial review; other matters

Subsections (c)(3), (d), (e), (i), (j), and (l)(1) of this section apply with respect to a person (other than an individual) or an individual who is debarred under paragraph (1) to the same extent and in the same manner as such subsections apply with respect to a person who is debarred under subsection (a)(1) of this section, or an individual who is debarred under subsection (a)(2) of this section, respectively.

(June 25, 1938, ch. 675, §306, as added Pub. L. 102-282, §2, May 13, 1992, 106 Stat. 150; amended Pub. L. 105-115, title I, §125(b)(2)(C), Nov. 21, 1997,

111 Stat. 2325; Pub. L. 107-188, title III, §304(a)-(c), June 12, 2002, 116 Stat. 665, 666; Pub. L. 107-250, title II, §203, Oct. 26, 2002, 116 Stat. 1610.)

PRIOR PROVISIONS

A prior section 306 of act June 25, 1938, was renumbered section 309 and is classified to section 336 of this title.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-188, §304(b)(1), substituted “Mandatory debarment; certain drug applications” for “Mandatory debarment” in heading.

Subsec. (b). Pub. L. 107-188, §304(b)(2)(A), substituted “Permissive debarment; certain drug applications; food imports” for “Permissive debarment” in heading.

Subsec. (b)(1)(C). Pub. L. 107-188, §304(a)(1), added subpar. (C).

Subsec. (b)(2). Pub. L. 107-188, §304(b)(2)(B), substituted “permissive debarment; certain drug applications” for “permissive debarment” in heading.

Pub. L. 107-188, §304(a)(2)(A), inserted “subparagraph (A) or (B) of” before “paragraph (1)” in introductory provisions.

Subsec. (b)(3), (4). Pub. L. 107-188, §304(a)(2)(B), (C), added par. (3) and redesignated former par. (3) as (4).

Subsec. (c)(2)(A)(iii). Pub. L. 107-188, §304(b)(3), substituted “paragraph (2) or (3) of subsection (b)” for “subsection (b)(2)”.

Subsec. (d)(3)(A)(i). Pub. L. 107-188, §304(b)(4)(A), substituted “subsection (a)(1) of this section or paragraph (2)(A) or (3) of subsection (b)” for “subsection (a)(1) or (b)(2)(A)”.

Subsec. (d)(3)(A)(ii)(II). Pub. L. 107-188, §304(b)(4)(B), inserted “in applicable cases,” before “sufficient audits”.

Subsec. (d)(3)(B)(i). Pub. L. 107-188, §304(b)(4)(C), inserted “or subsection (b)(3)” after “subsection (b)(2)(B)”.

Subsec. (d)(3)(B)(ii). Pub. L. 107-188, §304(b)(4)(C), (D), inserted “or subsection (b)(3)” after “subsection (b)(2)(B)” and “or the food importation process, as the case may be” before period.

Subsec. (l)(2). Pub. L. 107-188, §304(c), in first sentence struck out “and” after “subsection (b)(2) of this section,” and inserted “, and subsection (b)(3)(A) of this section” after “subsection (b)(2)(B) of this section” and in second sentence inserted “, subsection (b)(3)(B) of this section,” after “subsection (b)(2)(B) of this section”.

Subsec. (m). Pub. L. 107-250 added subsec. (m).

1997—Subsec. (d)(4)(B)(ii). Pub. L. 105-115 struck out “or 357” after “355”.

CONSTRUCTION

Section 7 of Pub. L. 102-282 provided that: “No amendment made by this Act [enacting this section and sections 335b and 335c of this title and amending sections 321, 336, 337, and 355 of this title] shall preclude any other civil, criminal, or administrative remedy provided under Federal or State law, including any private right of action against any person for the same action subject to any action or civil penalty under an amendment made by this Act.”

CONGRESSIONAL FINDINGS

Section 1(c) of Pub. L. 102-282 provided that: “The Congress finds that—

“(1) there is substantial evidence that significant corruption occurred in the Food and Drug Administration’s process of approving drugs under abbreviated drug applications,

“(2) there is a need to establish procedures designed to restore and to ensure the integrity of the abbreviated drug application approval process and to protect the public health, and

“(3) there is a need to establish procedures to bar individuals who have been convicted of crimes per-

taining to the regulation of drug products from working for companies that manufacture or distribute such products.”

§ 335b. Civil penalties

(a) In general

Any person that the Secretary finds—

(1) knowingly made or caused to be made, to any officer, employee, or agent of the Department of Health and Human Services, a false statement or misrepresentation of a material fact in connection with an abbreviated drug application,

(2) bribed or attempted to bribe or paid or attempted to pay an illegal gratuity to any officer, employee, or agent of the Department of Health and Human Services in connection with an abbreviated drug application,

(3) destroyed, altered, removed, or secreted, or procured the destruction, alteration, removal, or secretion of, any material document or other material evidence which was the property of or in the possession of the Department of Health and Human Services for the purpose of interfering with that Department's discharge of its responsibilities in connection with an abbreviated drug application,

(4) knowingly failed to disclose, to an officer or employee of the Department of Health and Human Services, a material fact which such person had an obligation to disclose relating to any drug subject to an abbreviated drug application,

(5) knowingly obstructed an investigation of the Department of Health and Human Services into any drug subject to an abbreviated drug application,

(6) is a person that has an approved or pending drug product application and has knowingly—

(A) employed or retained as a consultant or contractor, or

(B) otherwise used in any capacity the services of,

a person who was debarred under section 335a of this title, or

(7) is an individual debarred under section 335a of this title and, during the period of debarment, provided services in any capacity to a person that had an approved or pending drug product application,

shall be liable to the United States for a civil penalty for each such violation in an amount not to exceed \$250,000 in the case of an individual and \$1,000,000 in the case of any other person.

(b) Procedure

(1) In general

(A) Action by the Secretary

A civil penalty under subsection (a) of this section shall be assessed by the Secretary on a person by an order made on the record after an opportunity for an agency hearing on disputed issues of material fact and the amount of the penalty. In the course of any investigation or hearing under this subparagraph, the Secretary may administer oaths and affirmations, examine witnesses, receive evidence, and issue subpoenas requiring the

attendance and testimony of witnesses and the production of evidence that relates to the matter under investigation.

(B) Action by the Attorney General

In lieu of a proceeding under subparagraph (A), the Attorney General may, upon request of the Secretary, institute a civil action to recover a civil money penalty in the amount and for any of the acts set forth in subsection (a) of this section. Such an action may be instituted separately from or in connection with any other claim, civil or criminal, initiated by the Attorney General under this chapter.

(2) Amount

In determining the amount of a civil penalty under paragraph (1), the Secretary or the court shall take into account the nature, circumstances, extent, and gravity of the act subject to penalty, the person's ability to pay, the effect on the person's ability to continue to do business, any history of prior, similar acts, and such other matters as justice may require.

(3) Limitation on actions

No action may be initiated under this section—

(A) with respect to any act described in subsection (a) of this section that occurred before May 13, 1992, or

(B) more than 6 years after the date when facts material to the act are known or reasonably should have been known by the Secretary but in no event more than 10 years after the date the act took place.

(c) Judicial review

Any person that is the subject of an adverse decision under subsection (b)(1)(A) of this section may obtain a review of such decision by the United States Court of Appeals for the District of Columbia or for the circuit in which the person resides, by filing in such court (within 60 days following the date the person is notified of the Secretary's decision) a petition requesting that the decision be modified or set aside.

(d) Recovery of penalties

The Attorney General may recover any civil penalty (plus interest at the currently prevailing rates from the date the penalty became final) assessed under subsection (b)(1)(A) of this section in an action brought in the name of the United States. The amount of such penalty may be deducted, when the penalty has become final, from any sums then or later owing by the United States to the person against whom the penalty has been assessed. In an action brought under this subsection, the validity, amount, and appropriateness of the penalty shall not be subject to judicial review.

(e) Informants

The Secretary may award to any individual (other than an officer or employee of the Federal Government or a person who materially participated in any conduct described in subsection (a) of this section) who provides information leading to the imposition of a civil penalty under this section an amount not to exceed—

- (1) \$250,000, or
- (2) one-half of the penalty so imposed and collected,

whichever is less. The decision of the Secretary on such award shall not be reviewable.

(June 25, 1938, ch. 675, §307, as added Pub. L. 102-282, §3, May 13, 1992, 106 Stat. 159; amended Pub. L. 103-80, §3(g), Aug. 13, 1993, 107 Stat. 776.)

PRIOR PROVISIONS

A prior section 307 of act June 25, 1938, was renumbered section 310 and is classified to section 337 of this title.

AMENDMENTS

1993—Subsec. (b)(3)(A). Pub. L. 103-80 made technical amendment to reference to May 13, 1992, to reflect correction of corresponding provision of original act.

CONSTRUCTION

This section not to preclude any other civil, criminal, or administrative remedy provided under Federal or State law, including any private right of action against any person for the same action subject to any action or civil penalty under an amendment made by Pub. L. 102-282, see section 7 of Pub. L. 102-282, set out as a note under section 335a of this title.

§ 335c. Authority to withdraw approval of abbreviated drug applications

(a) In general

The Secretary—

(1) shall withdraw approval of an abbreviated drug application if the Secretary finds that the approval was obtained, expedited, or otherwise facilitated through bribery, payment of an illegal gratuity, or fraud or material false statement, and

(2) may withdraw approval of an abbreviated drug application if the Secretary finds that the applicant has repeatedly demonstrated a lack of ability to produce the drug for which the application was submitted in accordance with the formulations or manufacturing practice set forth in the abbreviated drug application and has introduced, or attempted to introduce, such adulterated or misbranded drug into commerce.

(b) Procedure

The Secretary may not take any action under subsection (a) of this section with respect to any person unless the Secretary has issued an order for such action made on the record after opportunity for an agency hearing on disputed issues of material fact. In the course of any investigation or hearing under this subsection, the Secretary may administer oaths and affirmations, examine witnesses, receive evidence, and issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence that relates to the matter under investigation.

(c) Applicability

Subsection (a) of this section shall apply with respect to offenses or acts regardless of when such offenses or acts occurred.

(d) Judicial review

Any person that is the subject of an adverse decision under subsection (a) of this section may

obtain a review of such decision by the United States Court of Appeals for the District of Columbia or for the circuit in which the person resides, by filing in such court (within 60 days following the date the person is notified of the Secretary's decision) a petition requesting that the decision be modified or set aside.

(June 25, 1938, ch. 675, §308, as added Pub. L. 102-282, §4, May 13, 1992, 106 Stat. 160.)

CONSTRUCTION

This section not to preclude any other civil, criminal, or administrative remedy provided under Federal or State law, including any private right of action against any person for the same action subject to any action or civil penalty under an amendment made by Pub. L. 102-282, see section 7 of Pub. L. 102-282, set out as a note under section 335a of this title.

§ 336. Report of minor violations

Nothing in this chapter shall be construed as requiring the Secretary to report for prosecution, or for the institution of libel or injunction proceedings, minor violations of this chapter whenever he believes that the public interest will be adequately served by a suitable written notice or warning.

(June 25, 1938, ch. 675, §309, formerly §306, 52 Stat. 1045; renumbered §309, Pub. L. 102-282, §2, May 13, 1992, 106 Stat. 150.)

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Security Administrator to Secretary of Health, Education, and Welfare [now Health and Human Services], and of Food and Drug Administration in the Department of Agriculture to Federal Security Agency, see notes set out under section 321 of this title.

§ 337. Proceedings in name of United States; provision as to subpoenas

(a) Except as provided in subsection (b) of this section, all such proceedings for the enforcement, or to restrain violations, of this chapter shall be by and in the name of the United States. Subpoenas for witnesses who are required to attend a court of the United States, in any district, may run into any other district in any proceeding under this section.

(b)(1) A State may bring in its own name and within its jurisdiction proceedings for the civil enforcement, or to restrain violations, of section 341, 343(b), 343(c), 343(d), 343(e), 343(f), 343(g), 343(h), 343(i), 343(k), 343(q), or 343(r) of this title if the food that is the subject of the proceedings is located in the State.

(2) No proceeding may be commenced by a State under paragraph (1)—

(A) before 30 days after the State has given notice to the Secretary that the State intends to bring such proceeding,

(B) before 90 days after the State has given notice to the Secretary of such intent if the Secretary has, within such 30 days, commenced an informal or formal enforcement action pertaining to the food which would be the subject of such proceeding, or

(C) if the Secretary is diligently prosecuting a proceeding in court pertaining to such food, has settled such proceeding, or has settled the informal or formal enforcement action pertaining to such food.

In any court proceeding described in subparagraph (C), a State may intervene as a matter of right.

(June 25, 1938, ch. 675, §310, formerly §307, 52 Stat. 1046; Sept. 3, 1954, ch. 1263, §37, 68 Stat. 1239; Pub. L. 101-535, §4, Nov. 8, 1990, 104 Stat. 2362; renumbered §310, Pub. L. 102-282, §2, May 13, 1992, 106 Stat. 150.)

AMENDMENTS

1990—Pub. L. 101-535 substituted “(a) Except as provided in subsection (b) of this section, all” for “All” and “any proceeding under this section” for “any such proceeding” and added subsec. (b).

1954—Act Sept. 3, 1954, struck out reference to section 654 of title 28.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-535 effective 24 months after Nov. 8, 1990, except that such amendment effective Dec. 31, 1993, with respect to dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances, see section 10(a)(1)(C) of Pub. L. 101-535, set out as a note under section 343 of this title.

CONSTRUCTION OF AMENDMENTS BY PUB. L. 101-535

Amendments by Pub. L. 101-535 not to be construed to alter authority of Secretary of Health and Human Services and Secretary of Agriculture under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), and the Egg Products Inspection Act (21 U.S.C. 1031 et seq.), see section 9 of Pub. L. 101-535, set out as a note under section 343 of this title.

SUBCHAPTER IV—FOOD

§ 341. Definitions and standards for food

Whenever in the judgment of the Secretary such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable definition and standard of identity, a reasonable standard of quality, or reasonable standards of fill of container. No definition and standard of identity and no standard of quality shall be established for fresh or dried fruits, fresh or dried vegetables, or butter, except that definitions and standards of identity may be established for avocados, cantaloupes, citrus fruits, and melons. In prescribing any standard of fill of container, the Secretary shall give due consideration to the natural shrinkage in storage and in transit of fresh natural food and to need for the necessary packing and protective material. In the prescribing of any standard of quality for any canned fruit or canned vegetable, consideration shall be given and due allowance made for the differing characteristics of the several varieties of such fruit or vegetable. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the Secretary shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. Any definition and standard of identity prescribed by the Secretary for avocados, cantaloupes, citrus fruits, or melons shall relate only to maturity and to the effects of freezing.

(June 25, 1938, ch. 675, §401, 52 Stat. 1046; Apr. 15, 1954, ch. 143, §1, 68 Stat. 54; Aug. 1, 1956, ch. 861, §1, 70 Stat. 919; Pub. L. 103-80, §3(h), Aug. 13, 1993, 107 Stat. 776.)

AMENDMENTS

1993—Pub. L. 103-80 substituted “or reasonable standards of fill of container. No definition” for “and/or reasonable standards of fill of container: *Provided*, That no definition”.

1956—Act Aug. 1, 1956, designated provisions constituting subsec. (a) as entire section and repealed subsec. (b) which provided the procedure for establishment of regulations and is covered by section 371(e) of this title.

1954—Act Apr. 15, 1954, designated existing provisions as subsec. (a) and added subsec. (b).

SAVINGS PROVISION

Section 3 of act Aug. 1, 1956, provided that: “In any case in which, prior to the enactment of this Act [Aug. 1, 1956], a public hearing has been begun in accordance with section 401 of the Federal Food, Drug, and Cosmetic Act [341 of this title] upon a proposal to issue, amend, or repeal any regulation contemplated by such section, or has been begun in accordance with section 701(e) of such Act [section 371(e) of this title] upon a proposal to issue, amend, or repeal any regulation contemplated by section 403(j), 404(a), 406(a) or (b), 501(b), 502(d), 502(h), 504 or 604 of such Act [section 343(j), 344(a), 346(a) or (b), 351(b), 352(d), 352(h), 354, or 364 of this title], the provisions of such section 401 or 701(e), as the case may be, as in force immediately prior to the date of the enactment of this Act [Aug. 1, 1956], shall be applicable as though this Act [amending this section and section 371(e) of this title] had not been enacted.”

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Security Administrator to Secretary of Health, Education, and Welfare [now Health and Human Services], and of Food and Drug Administration in the Department of Agriculture to Federal Security Agency, see notes set out under section 321 of this title.

FOOD SAFETY AND SECURITY STRATEGY

Pub. L. 107-188, title III, §301, June 12, 2002, 116 Stat. 662, provided that:

“(a) IN GENERAL.—The President’s Council on Food Safety (as established by Executive Order No. 13100 [set out below]) shall, in consultation with the Secretary of Transportation, the Secretary of the Treasury, other relevant Federal agencies, the food industry, consumer and producer groups, scientific organizations, and the States, develop a crisis communications and education strategy with respect to bioterrorist threats to the food supply. Such strategy shall address threat assessments; technologies and procedures for securing food processing and manufacturing facilities and modes of transportation; response and notification procedures; and risk communications to the public.

“(b) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of implementing the strategy developed under subsection (a), there are authorized to be appropriated \$750,000 for fiscal year 2002, and such sums as may be necessary for each subsequent fiscal year.”

FOOD SAFETY COMMISSION

Pub. L. 107-171, title X, §10807, May 13, 2002, 116 Stat. 527, provided that:

“(a) ESTABLISHMENT.—

“(1) IN GENERAL.—There is established a commission to be known as the ‘Food Safety Commission’ (referred to in this section as the ‘Commission’).

“(2) MEMBERSHIP.—

“(A) COMPOSITION.—The Commission shall be composed of 15 members (including a Chairperson, appointed by the President[]).